19 46 **K** **File No.** B. Khoti Settlement-/46

Legal **DEPARTMENT**

B. **BRANCH**

315.

p.108 (E/M) 1946

Subject:— A Bill to amend the Khoti Settlement Act 1880.

L.A. Bill no. V of 1946.

Bom. Act. no. XXIX of 1946.

File No. B. Khoti Settlement /46.

Std. Sectt. Slip 24 B e.

522-B.

C O N T E N T S.

Legal Department File No.B. Khoti Settlement/4C.

Sr. No.	Compilation No.	Subject	Pages
		A Bill to amend Khoti Settlement Act, 1880.	
1.		Progress chart-	1-2.
2.	U. O. to D.O.No. 160-confl. dated 6-4-45.	Draft Bill and remarks -	3-12.
		(Typed)	7-12 not copied
3.	Adv. Gen'l's opinion No. 26 of 1945 dated 24-4-45. and U. O. to D.O No. 314-confl. dated 6-5-45.	statement of the case and Adv. General's opinion-	13-20-
4.	----------	Typed copy of the Bill and statement ----	21-30 (not copied)
5.	U. O. to D. O. No. 330 confl. dated 2-11-45.	Remarks on certain clauses	31-32.
6.	U. O. to D.O. No. 1717 dated 1-3-46.	Amendment of Sec. 30 ---	33-34.
7.	U. O. to L.D. No. 53-L dated 17-6-46.	whether the Bill requires recommendation of the Governor	35-36.
8.	G. G. L. D. No. 4768 dated 3-7-46.	Publication of the Bill	37-56.
9.	----------	Report of the Select committee-	57-64.
10.	U. O. to Secy. R D No. 305-L dt. 1-8-46.	Remarks on certain amendments proposed-	65-66.
11.	U. O. to D. O. No. 463-L dated 5-8-46.	Draft amendment.	67-70.

P.t.o.

Bombay Secretariat.
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1.	2.	3.	4.
12.	------	General ~~of senctions~~ observations sent by the President, Ratnagiri Jilha Khot and Jaginchar Sabha ---	71-84.
13.	G.LLD No 7715 dated 4/11/46.	Seeking Governor's Assent --	85-86.
14.	L D RI No. 10424 dated 21/11/46.	Forwarding an Authentic copy of the Bill ----	87-88
15.	GRLD No. 8307 dated 22/11/46.	Publication of the Act --	89-90.
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17.	------	Debates --	111-214.

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17/5.
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Office of the R.L.A.

The requisite draft Bill is sent herewith. The clauses of the Bill are generally explained by the reference (noted marginarlly against them) to the R.D. instructions

2. The Khoti Settlement Act, 1880 (Bom. I of 1880), extends to all villages held by Khots in the district of Ratnagiri (paragraph 2 of section 1). Power is however taken to Government in paragraph 3 of section 1 to extend all or any provision to any such village held by a khot in the Kolaba district. Since it is proposed that the amendments should apply to each village in the Ratnagiri district only, the Bill has been drafted to provide for the insertion of a new section 43 at the end, on the lines of section 46(6) of the Bombay District Police Act, 1890.

3. The procedure suggested by R.D. in paragraph (iii) oftheir Memo. at page 92 is not suitable. Attachment under section 144 of the Bombay Land Revenue Code, 1879, is temporary, while attachmnet under section 159 is in the nature of a process for recovery of arrears. It is necessary to make a substantive provision that in default of management continuously for two years (instead of the present provision of 12 years in section 163 of the Land Revenue Code) a khoti Village shall lapse to Government. Such a provision would however be hit by section 299 of the Government of India Act, 1935, and the administrative machinery for fixing compensation hasgot to be decided upon and also the manner of determing compensation as required by that section for the loss to the khot of his rents from quasi-dharekaris and permanent tenants. The R. D. is therefore requested to examine the point further and give specific instructions for the provision desired to be made.

4. New section 43 (1) VII (ii) deletes the second paragraph of section 24. Since the khot is permitted to relinquish his lands the amount of the survey assessment of the lands for the time being held by him will not be the same for the period for which the survey assessment is fixed. The second paragraph has therefore been deleted and the first paragraph suitably amended.

5. New section 43(1) VIII (iii) (c) inserts a new Rule I in section 33 (1) (c) to make the position quite free from legal difficulty and doubt by declaring that notwithstanding anything contained in the preceding Rules I-V it shall be lawful for a permanent tenat to have reasonable rent determined under the Bombay Tenancy Act, 1939.

6. New section 43 (1) (x) amends section 36 to provide that local funds cess shall be leviable from such class privileged occupants on every rupee of the survey assessment of their holdings. Since local fund cess was being paid by the khot who was recovering it hitherto from the permanent tenants as part of their rents, and since the permanent tenants are now to pay the survey assessment as well as local fund cess direct to Government new sub-section(c) proposed in section 33 makes it clear that the rent payable by permanent tenants to the khots shall be thebalance after deducting from the rent entered as payable under sub-section (1), the amount of survey assessment and local fund cess payable by them to the Provincial Government.

7. New section 43(1) XI (1) provides for the khot relinquishing lands under section 74 of the Bombay Land Revenue Code, 1879 and also for forfeiture of the occupancy of privileged occupants for arrears of the survey assessment.

8. It is presumed that portion "D" of instruction (1) on page 91 is not in any way affected by A (R)'s marginal note on page 52.

9. The R.D. will no doubt attach the requisite Statement to the Bill.

10. The subject-matter of the Bill falls under entries 2, 20 and 30 in List II in the Seventh Schedule to the Government of India Act, 1935. As the Bill does not relate to any matter in the Concurrent Legislative List, it

it is not necessary to reserve it for the consideration of the Governor General with reference to section 107 (2) of the Government of India, Act, 1935, or paragraph (2) of the Proclamation. Under executive instructions the Bill requires previous concurrence of

Madhav Rookdeo.
16/5.
c/5.

previous concurrence of the Governor General before enactment.]

sd/- P.N.H.
5/4/45

Remembrancer of Legal Affairs.

U. R. to R.D. No. 160-confl., dated the 6th April 1945.

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16/5.

a/5.

Office of the R.L.A.

STATEMENT OF THE CASE.

Government has under its consideration proposals for the reform and regulation of the khoti tenure in Ratnagiri district with a view to safeguarding the rights and interests of the various classes of tenants whilst at the same time guaranteeing to the Khot the continunace ofhis just privileges. One ofthe proposals made is that khoti villages and dharas of khoti villages which the Khot fails to manage for two years continuous lv should lapse to Government. It is suggested at page 92 ante that a suitable means of doing this would be to substitute for "section 144" in section 27 of the Khoti Act the words "sections 159 to 163" to provide at the same time that in their application to the Khoti Settlement Act the words "with the previous sanction of the Commissioner" should be considered to be omitted from section 159 of the Bombay Land Revenue Code in order to facilitate administration and also to provide that section 162 should be read as if 'two' were substituted for 'twelve'

2. With reference to this suggestion, the R.L.A. in paragraph 3 of his opinion No. 160-confl., dated 6th April 1945, at pages 117-119 ante observed as follows:-

"The procedure suggested by R.D. in paragraph(iii) of their Memo. at page 92 isnot suitable. Attachment under section 144 of the Bombay Land Revenue Code, 1879, is temporary, while attachment under section 159 is in the nature of a process for recovery of arrears. It is necessary to make a substantive provision that in default of management continuosuly for two years (instead of the present provision of 12 years in section 163 of the Lnad Revenue Code), a khoti village shall lapse to Government. Such aprovision would however be hit by section 299 of the Government of India Act,1935, and the administrative machinery for fixing compensation has got to be decided upon and also the manner of determining compensation as required by that section for the loss to the khot of his rents from quasi-dharakaris and permanent tenants.

The R.D. is therefore requested to examine the point further and give specific instructions for the provision desired to be made."

3. The Secretary, R.C.D., however holds (p. 132 ante) that "the compensation for the loss of the khot's emoluments consisting of rights in land is the relief from his duties. It will be the khot who, by absenting himself from his duties with the known penalty of loss of rights, decides that the post is not worth the emoluments. The khot will thus himself decide that the compensation exceeds the value of the emoluments. The acquisition of his rights will not be compulsory in fact, whatever it may be in law.

4. The Advocate General is requested, as desired by Government, to advise whether proposal amounts to ~~compulsory~~ compulsory acquisition within the meaning of section 299 of the Government of India Act, 1935.

5. As it is desirable to expedite legislation, the Advocate General is requested kindly to treat the matter as very urgent.

sd/- P.N.M.
24/7/45.

Remembrancer of Legal Affairs.

U. O. to the Advocate General, Bombay, No. 204-confl. dated the 25th July 1945.

Madhav Rachhodas.
16/5.
c/5.

No. 26 of 1945.

ADVOCATE GENERAL'S CHAMBERS,

HIGH COURT,

Bombay, 24th August 1945.

Subject:- Khoti Settlement Act, 1880.

Bill to amend -

O P I N I O N.

I agree with the R.L.A. that an amendment of Section 2 of the Khoti Act in the manner suggested as ~~the~~ page 32 in the file and referred to in the statement of the case will not be satisfactory for the reasons given in the statment. The event on which it is intedded that there should be a lapse to Government is the failure to Manage(which is the subject matter of Section 2 of the Khote Act) and not the failure to pay the dues.

If, as is suggested a substantive provision is made for a lapse to Government, in my opinion there should not be any attraction to such a provision of Section 299 of the Government of India Act. That Section provides in the first place that no person shallbe deprived of his property save by authority of Law. Once the Act provides for a lapse, the authority of law will be there. Sub-section 2, relates to compulsory acquisition for "public purposes". Lands which laspe to Government cannot be said to be compulsorily acquired within the meaning of Sub-Section 2. Sub-Section 3 need not be considered, for the purposes of question ~~xx~~ now being dealth with.

A Khote has an interest in the land itself, which he manages, but he holds a village conditionally on his performance of allthe conditions annexed to his tenure and subject to the provisions of the Act.

Although it may not be accurate to say that by

Madhav Raokadam.
c/5. 16/5.

by failure to manage, he himself determines that it is not worth while to hold the Khoti, it is enough to say that if he fails to manage for a specified period he fails to carry out the conditions of his holding of the village and the Act may provide for a lapse. There is in my opinion no question of any compensation.

A matter that will have to be considered at some stage will be the application of any amendment as regards lapse to cases where there has been at the date of the coming into operation of the amendment, a failure to manage, and cases where the Khoti is already being mananged by the Collector. The amendment would normally apply to fialures which occur after it comes into operation. Sepcific provision will have to be made where e.g. a Khoti has already been managed by the Collector for ever two years; or such other period as may be fixed.

sd/- C.K. Daftary.

Advocate General.

Madhav Raokadam.
16/5.

c/5,

Office of the R.L.A.

As desired by Secy., R.C.D., the Advocate General was consulted. A copy of the Statement ofthe Case prepared for the Advocate General and of his opinion No. 26, dated 24th August 1945, is sent herewith.

2. Clausses VI and XI ofthe Bill at pages 122 have been amended as required.

3. The following clause may be inserted as cluase VIII in Bill and the existing clauses VIII to XI renumbered as clauses IX to XII :-

" VIII. The existing section 27 shall be renumbered as sub-section (1) ofthat section, and after the sub-section so renumbered, the following sub-section shall be inserted, namely:-

Where the co-shares have, for two successive years at any time after the commencement of the Khoti Settlement (Amendment) Act, 1945, flaled to nominate one of their number within the prescribed period as required by the Collector under sub-section (1), or to be unanimous as to the nomination, the village shall thenceforward vest in the Crown for the purposes of the Province free from all encumbrances created by any of the co-shares or any of their predecessors-in-title or in anywise subsisting as against any of the shares, but without prejudice to the rights of the persons in actual possession of the lands in the village.

sd/-P.N.M.
5/9.

Remembrancer of Legal Affairs.

R. to R.D. No. 314 confl. dated the 6th September 1945.

Madhav Raokadam. c/5. 16/5.

Office of the R.L.A.

Clauses I and III . - Please see paragraph 1 of Secretary R.D.'s note at pages 142-143 ante. The amendments suggested by Secy. R.D. are in order. Draft Bill at pages 145-149 ante has been amended accordingly.

Clause VIII.- Please see paragraph 2 of Secy, R.D.'s note at page 143 ante. Under the Bill provision is made for vesting the village in the Crown for a fialure in two successive years to nominate a managing Khot. Thea act ofattaching a village and taking it under management is consequential upon the failure of co-shares to nominate a managing Khot. The law as it stands permits the co-shares to keep a village under attachment from year to year without incurring any penalty of lapse of such village. (vide R.L.A's opinion No. 100 Confl, dated 2nd May 1933 and No. 6398, dated 22nd July 1941). In the latter opinion it is held that a village attached under section 27 of the Act is to be restored on the expiry ofthe yearx to the body of khots even if there are arrears. and that if the default be made for the next year, the Collector can again take action under section 144, Bombay Land Revenue Code. In view of this opinion, there is no need to amend the Bill as it covers the case of a village under attachment on the date of the coming into force of the Act. In order however to plead failure in two successive years on the part of the co-shares, executive orders may be issued instructing the Collector to restore possession of a village so attached to the co-shares at the end of every revenue year.

As regards the proposal to substitute the word

"promulgation" for the word "commencement" (para 2 of Secretary R.D.'s note on p. 144-A), this is really unnecessary because the date of commencement of the proposed Act will be the date it is published in the B.G.G. after the requisite assent. (See section 5 of the Bombay General Clauses Act, 1904) If the date of "promulgation" is considered as the date of "assent", the public will find it difficult to ascertain it, while if it is considered as the date of publication in the B.G. G., the word "commencement" is quite proper in the present case. No change seems therefore necessary.

Clause IX.- Please see paragraph 8 of R.D. note at p. 141 and the marginal remark of Secretary, R.D. thereon. There is no objection to substituting "14" for "12" in clause IX. R.D. will have to see that the present Bill is not enacted before section 14A is made part of the Bombay Tenancy Act.

The statement at pages 155-157 ante, as amended, is in order.

sd/- P.H.U.

Remembrancer of Legal Affairs.

U. R, to R.D., No. 330-confl. dated the 2nd November 1945.

Madhav Mahoodas.
16/8.

c/8.

Office of the R.L.A.

The view taken in paragraphs 3, 4 and 5 of Revenue Department note at page 27-28 ante is correct. The draft amenment asked for in Secretary, Revenue Department's note at page 28 ante may be as follows:-

" In section 39 bf the Khoti Settlement Act, 1880, for the word, figures and letters "sections 112, 117A. 117B," the word and figures "section 118" shall be substituted.

It is presumed that Revenue Department will take steps to embody this amendment in the draft Bill already supplies by the Remembrancer of Legal Affairs.

sd/- P.N.M.
28/2/46.

Remembrancer of Legal Affairs.

U. R. to R.D. No. 1717 , dated the 1st March 1946.

Madhav Rookadam.

16/5. c/5.

Office of the R.L.A.

The draft Bill and Statement of Objects and Reasons at pages 171 to 176 ante have been suitably amended.

The Bill does not require any anaction or recommendation under the Government of India Act, 1935 or affect any special responsibility of the Governor.

The reference to section 14A of the Tenancy Act in modification IX (iii) (c) in new section 43(1) proposed to be inserted by clause 2 of the Bill at p. 173 ante is inap-propriate until that section is actually incorporated in the Tenancy Act (Cf. the last but one paragraph of R.L.A.'s opinion No. 330-Confl., dated the 2nd November 1945) Reference to section 14A has therefore been changed to section 12 in the draft Bill and Statement of Objects and Reasons. When the Bombay Tenancy Act is amended and section 14A is incorportated in it, an amendment may later be brought to the Khoti Bill to substitute section 14A for section 12.

sd/- P[illegible].
Remembrancer of Legal Affairs.

U. R. To R.D., No. 53-L dated 17th June 1946.

Madhav Raokadam.
16/6.
c/5.

Bills.

A Bill to amend the Khoti Settlement Act, 1880.

GOVERNMENT OF BOMBAY.
Legal Department.

Resolution No. 4768.

Council Hall, Poona, 3rd July 1946.

Memorandum from the Revenue Department No. 9504/39-IX, dated the 28th June 1946,-- Transferring for necessary action, the papers relating to a Bill to amend the Khoti Settlement Act, 1880.

RESOLUTION.-- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 3rd July 1946, as Bill No. V of 1946.

2. The Bill and the statement should be translated into Marathi Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette, on the 5th July 1946.

3. The dates of t e various publications should be reported to the Secretary to the Bombay Legislative Assembly.

By order of the Governor of Bombay,

sd/- M.G. Monani.

Assistant Remembrancer of Legal Affairs.

To

The Manager, Government Central Press, Bombay (with the Bill and Statement of Objects and Reasons with a request that 230 Gazette copies of the Bill and the statement may be forwarded to the Secretary to the Bombay Legislative Assembly for distribution to the Members of the Bombay Legislative Assembly and 25 copies for the use of the Legal Department),

The Revenue Department,
* The Oriental Translator to Government,
The Secretary to the Bombay Legislative

The Secretary to the Bombay Legislative Assembly

With a copy of the Bill and S.O.R.

With five extra Copies of the Bill.

Madhav Raokndam.
16/6.
c/5.

Office of the R.L.A.

I think an amendment is necessary, for it is possible for the co-shares to nominate one of their number as managing khot but such sharer who is nominated may be unable to serve as managing khot for any reason and may fail to delegate his duties and powers under section 31A. In that case the Collector will have to take some action.

2. The amendments may follow closely the wording of the amendment made at the beginning of the second paragraph of section 27 by Bombay Act III of 1904.

3. Since however the Select Committee did not decide upon these amendments, they cannot be incorporated in the Bill as amended by the Select Committee.

4. The following amendments may therefore, by moved at the second reading of the Bill in the House:-

In clause 9-

(1) For sub-clause (1) the following shall be substituted namely:-

" (1) The existing section 27 of the said Act shall be renumbered as sub-section (1) of that section and in the said sub-section (1) for the words "are not unanimous as to the nomination" the words, figures and letters" do not agree by a majority of all the co-shares of the village as to the nomination or if the sharer who is so nominated is for any reason unable to serve as managing khot, and fails to delegate his duties and powers under section 31A in such time as may be prescribed by the Collector in this behalf", shall be substituted.

(2) In sub-clause(2), in the new sub-section (2), after the word "nomination" the followi

the following shall be inserted, namely :-

" or if the sharer who is so nominated has for any reason been unable to serve as managing khot, and failed to delegate his duties and powers under section 31A, within such time as may have been prescribed by the Collector in this behalf."

sd/- P.M.

Remembrancer of Legal Affairs.

U. O. R. to Secretary, R.D. No. 385-L, dated the 1st August 1946.

madhav Mackddm.

c/S.

16/8/46.

Office of the R.L.A.

The requisite amendment to be proposed at the Third Reading of the Khoti Settlement Bill is sent herewith. The third reading of the Khoti Bill may be taken up after the Tenancy Bill is read a third time. Notice of the amendment may be given by Revenue Parliamentary Secretary.

sd/- P.N.H.
5/9/46.

Remembrancer of Legal Affairs.

U. R. to R.A. No. 463-p, dated the 5th September 1946.

Madhav Raokadam.
16/5.

c/5.

Third reading and amendment to L.A. Bill No. V of 1946.

(A Bill to amend the Khoti Settlement Act, 1880).

In sub-clause (iii) (b) of clause 10(1), after the figures "12" the words, figures and letter "or 14 A, as the case may require" shall be inserted.

Madhav Raokadam.

16/5.

c/5.

No. 7715
Legal Department,
Bombay Castle 4th November 1946.

From

P.N. Moos, Esquire, C.I.E., I.C.S.,
Secretary to the Government of Bombay.

To

The Secretary to the Governor of Bombay.

Subject :- A Bill to amend the Khoti Settlement.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to ~~xxx~~ forward herewith for the assent of His ~~xxxxxx~~ Excellency the Governor, an authentic copy of a Bill to amend the Khoti Settlement Act, 1880, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 13th and 23rd September 1946 respectively.

2. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act, 1935, or falls within the purview of clause ~~xxx~~ (a) , (b), (c) or (d) of paragraph XVII ofthe Instrument of ~~xxx~~ Instructions to the Governor of Bombay.

3. The subject -matter of the Bill falls under entries 2, 21, and and 39 in List II in the Seventh Schedule to the Government of India Act, 1935.

4. The Bill does not contain any provision repugnant to the provisions of any earlier Federal law or an existing Indian law with respect to any of the matters enumerated in the Concurrent Legislative List. It is not therefore necessary to reserve the Bill for consideration of the Governor General with reference to

section 107(2) of the Government of India Act, 1935.

5. The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement.

6. I am also to forward herewith one copy of each of the papers noted in the margin.

---

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.
2. Report of the Select Committee together with the Bill as amended by the Select Committee.
3. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.
4. Bill as read for the third time and passed by the Bombay Legislative Council.
5. Extracts from the proceedings of the Bombay Legislative Assembly dated the 15th and 26th July 1946 and 2nd and 13th September 1946 and of the Bombay Legislative Council dated the 18th, 23rd and 24th September 1946.

I have the honour to be,

Sir,

Your most obedient servant,

sd/- P.H.N.
4/11/46.
Secretary to Government of Bombay,
Legal Department

Through the Secretary to the
Government of Bombay, Revenue Department.

Madhav Raokadam.
16/5.
6/6.

No. G. S. 4208.

Office f the Governor's Secretary,
Government House,
Bombay 20th November 1946.

From

D. Symington, Esquire, C.I.E. I.C.S.,
Secretary to the Governor of Bombay.

To

The Secretary to Government,
Legal Department.

Subject :- Khoti Settlement (Amendment)
Bill, 1946

Sir,

With reference to the correspondence ending with your letter No. 8103, dated the 16th November 1946, I am directed to return herewith, with His Excellency the Governor's assent signified thereon, the copy ofthe Khoti Settlement (Amendment) Bill, 1946.

Your x obedient servant,

sd/-

Secretary to the Governor of Bombay.

Madhav Raokadam.

c/5.

16/5/56.

Acts.

Publication of the Khoti Settlement (Amendment) Act, 1946.

GOVERNMENT OF BOMBAY.

Legal Department.

Resolution No. 8307

Bombay Castle, 22nd November 1946.

Letter to the Secretary to the Governor, No. 7715, dated the 4th November 1946.

Letter from the Secretary to the Governor, No.GS. 4208, dated the 20th November 1946.

" With reference to the correspondence ending with your letter No. 8103, dated the 16th November 1946, I am directed to return herewith, with His Excellency the Governor's assent signified thereon, the copy of the Khoti Settlement(Amendment) Bill, 1946."

RESOLUTION:- The law should be published as Bombay Act No.XXIX of 1946 in the Bombay Government Gazette, dated the 22nd November 1946.

The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (In Urdu and Devnagari Scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department with reference to the memorandum from that Department No. 9504/39-IX, dated the 28th June 1946.

By order of the Governor of Bombay,

sd/- Dhurandhar, S.W.

Assistant Secretary to the Government of Bombay, Legal Department.

To

The Manager, Government Central Press, Bombay (with a copy of of the Act and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Department).
The Revenue Department.
The Oriental Translator to Government, } with a copy of the Act

RKS 3/1/5

The Secretary to the Bombay Legislative Council,
The Secretary to the Bombay Legislative Council,
The Director of Publicity, Bombay,

} with a copy of the Act.

With five extra copies of the Act.

Authentication.

17/5.

c/5.

S.A.
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L. A. BILL No. V OF 1946.

A Bill to amend the Khoti Settlement Act, 1880.

(As published in the "Bombay Government Gazette" of 3rd July 1946.)

WHEREAS it is expedient to amend the Khoti Settlement Act, 1880, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Bom. I of 1880.

Short title.

1. This Act may be called the Khoti Settlement (Amendment) Act, 1946.

Insertion of new section 43 in Bom. I of 1880.

2. After section 42 of the Khoti Settlement Act, 1880, the following new section shall be inserted, namely:—

Bom. I of 1880.

Application of Act to certain areas with modifications.

'43. (*1*) Notwithstanding anything hereinbefore contained, the provisions of this Act when applied to any village in the Ratnagiri or Kolaba district in which sections 14 to 31 of the Bombay Tenancy Act, 1939, have come into force, shall be subject to the following modifications, namely:—

Bom. XXIX of 1939.

I. In section 7—

after the words "on the payment of" the words "the survey assessment from time to time lawfully due by them to the Provincial Government and" shall be inserted.

II. In section 8—

(*i*) for the words "shall be held to be yearly tenants" the words "or if the agreement provides for a term not exceeding ten years shall be held to be tenants for a period of not less than ten years" shall be substituted; and

(*ii*) after the figures "33" the word, figure and brackets ", sub-section (*1*)," shall be inserted.

III. In section 10—

(*i*) after the words "failing to pay" the words "the survey assessment or" shall be inserted; and

(*ii*) the portion beginning with the words "or does any act purporting to transfer his land" and ending with the brackets, words and figure "(except in the cases provided for in section 9)" shall be deleted.

IV. Section 14 shall be deleted.

V. In section 16 for the words "the names of the occupants thereof, and, in the case of a survey number held by a permanent tenant, whether his

interest therein is transferable otherwise than by inheritance or not " the words " and the names of the occupants thereof " shall be substituted.

VI. In sub-section (*1*) of section 20, clause (*a*), and the brackets and letter " (*b*) " and the words " fact or " shall be deleted.

VII. In section 24—

(*i*) for the words " of the lands of the village minus such percentage of deduction, if any, as the Provincial Government may in each case direct " the words " for the time being of the lands of the village being lands not held by any privileged occupant and not relinquished by the khot " shall be substituted ; and

(*ii*) the second paragraph shall be deleted.

VIII. The existing section 27 shall be renumbered as sub-section (*1*) of that section, and after the sub-section so renumbered, the following sub-section shall be inserted, namely :—

" (*2*) Where the co-sharers have, for two successive years at any time after the commencement of the Khoti Settlement (Amendment) Act, 1946, failed to nominate one of their number within the prescribed period as required by the Collector under sub-section (*1*), or to be unanimous as to the nomination, the village shall thenceforward vest in the Crown for the purposes of the Province free from all encumbrances created by any of the co-sharers or any of their predecessors-in-title or in anywise subsisting as against any of the sharers, but without prejudice to the rights of the persons in actual possession of the lands in the village." Bom. 1946

IX. In section 33—

(*i*) in clause (*a*), for the words " the survey-assessment of his land ;" the word " nil ;" shall be substituted ;

(*ii*) in clause (*b*), the words " the survey-assessment of his land and in addition thereto " shall be deleted ;

(*iii*) in clause (*c*)—

(*a*) after the words " under the following rules ", the following shall be inserted, namely :—

" but subject always to the deduction referred to in sub-section (*2*) ";

(*b*) in sub-rule (1) of Rule V, for the words "On an application made on or before the first day of May in any year by any tenant, whose rent is payable wholly or partly as a crop-share ", the following shall be substituted, namely :—

" Every tenant whose rent is payable wholly or partly as a crop-share shall, within three

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Bom. of 1946.

months from the date of the passing of the Khoti Settlement (Amendment) Act, 1946, apply for fixing the commuted value of such crop-share. On receipt of such application or if no such application is made within the said period of three months, on his own motion";

and

(*c*) after Rule V the following new rule shall be inserted, namely:—

"*Rule VI.*—Notwithstanding anything contained in the preceding rules, it shall be lawful for any tenant to apply to the Mamlatdar under section 12 of the Bombay Tenancy Act, 1939, for determining the reasonable rent payable by him; and in any such case, the rent so determined under that Act shall, with effect from the commencement of the next ensuing revenue year, be payable by the tenant in lieu of the rent hitherto payable by him." Reasonable rent may be determined under Bombay Tenancy Act, 1939.

Bom. XXIX of 1939.

X. The existing section 33 shall be renumbered as sub-section (*1*) of that section, and to section 33 the following new sub-section shall be added, namely:—

"(*2*) Notwithstanding anything contained in sub-section (*1*), the amount of survey-assessment and local fund cess payable by a permanent tenant to the Provincial Government under sections 7 and 36 shall be deducted from the rent entered as payable under sub-section (*1*) whether before or after the passing of the Khoti Settlement (Amendment) Act, 1946, and the balance only after such deduction shall be payable as rent by the tenant to the khot."

Bom. of 1946.

XI. In section 36—

(*i*) to the first paragraph the following shall be added, namely:—

"and from privileged occupants on every rupee of the survey-assessment of their respective holdings"; and

(*ii*) the second and third paragraphs shall be deleted.

XII. In section 39—

(*i*) for the word, figures and letters "sections 112, 117-A, 117-B," the word and figures "section 112," shall be substituted;

(*ii*) to the first paragraph the following proviso shall be added, namely:—

"Provided that section 74 shall apply to the lands not held by a privileged occupant, and

clause (*b*) of section 150 and section 153 shall apply to the lands held by a privileged occupant, in any such village.";

(*iii*) before clause (*b*) the following new clause shall be inserted, namely:—

"(*a*) in section 74, the word 'khot' shall be deemed to be substituted for the word 'occupant'";

(*iv*) clause (*b*) shall be deleted; and

(*v*) for clause (*c*) the following shall be substituted, namely:—

"(*c*) the khot in respect of the jama of his village, and a privileged occupant in respect of the survey-assessment of his holding shall, for the purposes of section 136, be deemed to be the persons primarily responsible to the Provincial Government".

(*2*) The provisions of this Act when applied to any such village in which a record of rights is maintained under Chapter X-A of the Bombay Land Revenue Code, 1879, shall likewise be subject to the following further modification, namely:— Bom. V of 1879.

Part III containing sections 16 to 22 shall be deleted.'

STATEMENT OF OBJECTS AND REASONS.

No scheme of rural reconstruction or planned development can succeed unless the rural population affected thereby co-operates whole-heartedly and evinces keenness and enthusiasm in the success of such planned development. Such planning has also to be based on fairly accurate statistical record. The majority of cultivators of khoti lands in Ratnagiri district who have no fixed tenure or who are not in a position to resist their exploitation by some of the unscrupulous khots, are, as things stand at present, not in a position to take any interest in planned development of the lands in Ratnagiri district. It is also difficult to plan systematic development in the absence of the usual village statistics which are not maintained in khoti villages.

2. Government considers it necessary that the record of rights under the Bombay Land Revenue Code, 1879, and other allied village registers should, as soon as circumstances permit, be introduced in the khoti villages and the administration of the khoti villages should be put on the same efficient basis as the normal administration of Government villages. Government also considers that the rights and interests of the various classes of tenants under the Khoti Settlement Act, 1880, should be adequately safeguarded by application of sections 14 to 31 of the Bombay Tenancy Act, 1939, to the Ratnagiri district and certain villages in the Kolaba district to enable the tenants to resist any exploitation by unscrupulous landlords. The Khoti Settlement Act has to be suitably amended so as to secure to the khots their legitimate rights and just privileges while at the same time safeguarding the tenants' interests by bringing it in line with sections 14 to 31 of the Bombay Tenancy Act.

3. It is proposed to amend the Khoti Settlement Act to carry out the objects stated in paragraphs 1 and 2 above and the following notes on the modifications sought to be effected by clause 2 of the proposed Bill explain the reasons underlying each amendment:—

Modification I.—These amendments are necessary to secure that the privileged occupants pay assessment to Government through the village accountant and the rent, if any, due under the Khoti Settlement Act to the khot.

Modification II.—This amendment is necessary to bring section 8 of the Khoti Settlement Act in line with section 23 of the Bombay Tenancy Act.

Modification III.—This amendment is necessary to bring section 10 of the Khoti Settlement Act in line with section 31 of the Bombay Tenancy Act.

Modification IV.—As crop-share rents are being compulsorily commuted, retention of section 14 of the Khoti Settlement Act is unnecessary.

Modifications V and VI.—These amendments are necessary in view of the application of section 31 of the Bombay Tenancy Act to khoti villages.

Modification VII.—This amendment is necessary as the liability for payment of survey assessment so far as the lands held by the privileged occupants are concerned, is primarily imposed on the privileged occupants.

Modification VIII.—The khot has been given certain privileges in return for the services he renders in the collection of land revenue. The procedure for attachment of khoti villages under section 27 of the Khoti Settlement Act,

however, allows a khot to neglect his duty so far as collection of revenue is concerned and still claim the profits of management of the estate *minus* the cost of management at any time within 12 years from the 1st of August following the date of attachment of the estate under section 27. Government considers it necessary to discourage such dereliction of duty on the part of the khot and put some sense of responsibility into him and it is therefore proposed that if the co-sharers fail to nominate a managing khot for two successive years, the village shall lapse to Government.

Modification IX.—As it is proposed that the privileged occupants should pay survey assessment direct to Government, it is necessary that crop-share rent, which includes survey assessment, should be commuted into cash under section 33 of the Khoti Settlement Act so that the privileged occupants may pay survey assessment direct to Government and the balance, as rent, to the khot. The amendments proposed in (*i*), (*ii*) and (*iii*) (*a*) and (*b*) are designed to secure this object and that proposed in (*iii*) (*c*) is designed to bring the rules under section 33 in line with section 12 of the Bombay Tenancy Act.

Modification X.—This amendment is necessary as all privileged occupants will pay survey assessment direct to Government and will only pay the balance admissible under the Khoti Settlement Act as rent to the khot.

Modification XI.—This provides for recovery of local fund cess from the privileged occupants.

Modification XII.—These amendments are necessary in view of the introduction of record of rights in khoti villages and the imposition of the primary liability for payment of survey assessment on the privileged occupants so far as lands held by them are concerned.

27th June 1946. MORARJI DESAI.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. V OF 1946]

(As published in the "Bombay Government Gazette" of 3rd July 1946.)

A Bill to amend the Khoti Settlement Act, 1880.

[Mr. MORARJI R. DESAI, M.L.A.]

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. V OF 1946

A Bill to amend the Khoti Settlement Act, 1880.,

(As read for the third time and passed by the Legislative Assembly on the 13th September 1946.)

Bom. I of 1880.

WHEREAS it is expedient to amend the Khoti Settlement Act, 1880, for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. *Short title.*—This Act may be called the Khoti Settlement (Amendment) Act, 1946.

Bom. I of 1880.

2. In section 7 of the Khoti Settlement Act, 1880, hereinafter called "the said Act",

Amendment of section 7 of Bom. I of 1880.

After the words "on the payment" the words "by them to the Provincial Government of the survey assessment from time to time lawfully due by the khot to the Provincial Government and" shall be inserted.

Amendment of section 8 of Bom. I of 1880.

3. In section 8 of the said Act—

(*i*) for the words "shall be held to be yearly tenants" the words "or if the agreement provides for a term not exceeding ten years shall be held to be tenants for a period of not less than ten years" shall be substituted; and

(*ii*) after the figures "33" the word, figure and brackets, "sub-section (*1*)," shall be inserted.

Amendment of section 10 of Bom. I of 1880.

4. In section 10 of the said Act—

(*i*) After the words "failing to pay" the words "the survey assessment or" shall be inserted; and

(*ii*) the portion beginning with the words "or does any act purporting to transfer his land" and ending with the brackets, words and figure "(except in the cases provided for in section 9)" shall be deleted.

Deletion of section 14 of Bom. I of 1880.

5. Section 14 of the said Act shall be deleted.

Amendment of section 16 of Bom. I of 1880.

6. In section 16 of the said Act, for the words "the names of the occupants thereof, and, in the case of a survey number held by a permanent tenant, whether his interest therein is transferable otherwise than by inheritance or not" the words "and the names of the occupants thereof" shall be substituted.

Amendment of section 20 of Bom. I of 1880.

7. In sub-section (*1*) of section 20 of the said Act, clause (*a*), and the brackets and letter "(*b*)" and he words "fact or" shall be deleted.

Amendment of section 24 of Bom. I of 1880.

8. In section 24 of the said Act—

(*i*) for the words "of the lands of the village minus such percentage of deduction, if any, as the Provincial Government may in each case direct" the words "for the time being of the lands of the village being lands not held by any privileged occupant and not relinquished by the khot" shall be sustituted; and

(*ii*) the second paragraph shall be deleted.

Amendment of section 27 of Bom. I of 1880.

9. (*1*) The existing section 27 of the said Act shall be renumbered as sub-section (*1*) of that section and in the said sub-section (*1*) for the words "are not unanimous as to the nomination" the words, figures and letter "do not agree by a majority of all the co-sharers of the village as to the nomination or if the sharer who is so nominated is for any reason unable to serve as managing khot, and fails to delegate his duties and powers under section 31A in such time as may be prescribed by the Collector in this behalf" shall be substituted :—

(*2*) in the said section 27 the following new sub-section shall be added, namely :—

"(*2*) Where the co-sharers have, for six successive years at any time after the commencement of the Khoti Settlement (Amendment) Act, 1946, failed to nominate one of their number within the prescribed period as required by the Collector under sub-section (*1*), or to agree by a majority of all the co-sharers of the village to the nomination, or if the sharer who is so nominated has for any reason been unable to serve as managing khot, and failed to delegate his duties and powers under section 31A, within such time as may have been prescribed by the Collector in this behalf, the village shall thenceforward vest in the Crown for the purposes of the Province free from all encumbrances created by any of the co-sharers or any of their predecessors-in-title or in anywise subsisting as against any of the sharers, but without prejudice to the rights of the persons in actual possession of the lands in the village."

Bom. of 1946.

Amendment of section 33 of Bom. I of 1880.

10. (1) Section 33 of the said Act shall be renumbered as sub-section (*1*) of that section and in the said sub-section—

(*i*) in clause (*a*), for the words "the survey-assessment of his land;" the word "nil;" shall be substituted;

(*ii*) in clause (*b*), the words "the survey-assessment of his land and in addition thereto" shall be deleted

(*iii*) in clause (*c*)—

(*a*) after the words "under the following rules" the following shall be inserted, namely:—

"but subject always to the deduction referred to in sub-section (*2*)";

and

(*b*) after Rule V the following new rule shall be inserted, namely:—

Reasonable rent may be determined under Bombay Tenancy Act, 1939.

"*Rule VI*.—Notwithstanding anything contained in the preceding rules, it shall be lawful for any tenant to apply to the Mamlatdar under section 12 or 14A, as the case may require, of the Bombay Tenancy Act, 1939, for determining the reasonable rent payable by him; and in any such case, the rent so determined under that Act, shall, with effect from the commencement of the next ensuing revenue year, be payable by the tenant in lieu of the rent hitherto payable by him."

Bom. XXIX of 1939.

(2) In the said section 33 the following new sub-section shall be added, namely:—

"(*2*) Notwithstanding anything contained in sub-section (*1*), the amount of survey-assessment and local fund cess payable by a permanent tenant to the Provincial Government under sections 7 and 36 shall be deducted from the rent entered as payable under sub-section (*1*) whether before or after the passing of the Khoti Settlement (Amendment) Act, 1946, and the balance only after such deduction shall be payable as rent by the tenant to the khot."

Bom. of 1946.

11. In section 36 of the said Act—

Amendment of section 36 of Bom. I of 1880.

(*i*) to the first paragraph the following shall be added, namely:—

"and from privileged occupants on every rupee of the survey-assessment of their respective holdings"; and

(*ii*) the second and third paragraphs shall be deleted.

12. In section 39 of the said Act—

Amendment of section 39 of Bom. I of 1880.

(*i*) for the word, figures and letters "sections 112, 117-A, 117-B," the word and figures "section 112," shall be substituted;

(*ii*) to the first paragraph the following proviso shall be added, namely:—

"Provided that section 74 shall apply to the lands not held by a privileged occupant, and clause (*b*) of section 150 and section 153 shall apply to the lands held by a privileged occupant, in any such village.";

(*iii*) before clause (*b*) the following new clause shall be inserted, namely:—

"(*a*) section 74 shall be read and understood as if the word 'khot' were substituted for the word 'occupant'";

(*iv*) clause (*b*) shall be deleted; and

(*v*) for clause (*c*) the following shall be substituted, namely:—

"(*c*) the khot in respect of the jama of his village, and a privileged occupant in respect of the survey-assessment of his holding shall, for the purposes of section 136, be deemed to be the persons primarily responsible to the Provincial Government."

Insertion of new section 43 in Bom. I of 1880.

13. After section 42 of the said Act, the following new section shall be inserted, namely:—

Application of Act to certain areas with modifications.

"43. Notwithstanding anything hereinbefore contained, the provisions of this Act when applied to any village in the Ratnagiri or Kolaba District in which record of rights is maintained under Chapter X-A of the Bombay Land Revenue Code, 1879, shall be subject to the following modification, namely:— Bom. V 1879.

Part III containing sections 16 to 22 shall be deleted."

STATEMENT OF OBJECTS AND REASONS

No scheme of rural reconstruction or planned development can succeed unless the rural population affected thereby co-operates whole-heartedly and evinces keenness and enthusiasm in the success of such planned development. Such planning has also to be based on fairly accurate statistical record. The majority of cultivators of khoti lands in Ratnagiri district who have no fixed tenure or who are not in a position to resist their exploitation by some of the unscrupulous khots, are, as things stand at present, not in a position to take any interest in planned development of the lands in Ratnagiri district. It is also difficult to plan systematic development in the absence of the usual village statistics which are not maintained in khoti villages.

2. Government considers it necessary that the record of rights under the Bombay Land Revenue Code, 1879, and other allied village registers should, as soon as circumstances permit, be introduced in the khoti villages and the administration of the khoti villages should be put on the same efficient basis as the normal administration of Government villages. Government also considers that the rights and interests of the various classes of tenants under the Khoti Settlement Act, 1880, should be adequately safeguarded by application of sections 14 to 31 of the Bombay Tenancy Act, 1939, to the Ratnagiri district and certain villages in the Kolaba district to enable the tenants to resist any exploitation by unscrupulous landlords. The Khoti Settlement Act has to be suitably amended so as to secure to the khots their legitimate rights and just privileges while at the same time safeguarding the tenants' interest by bringing it in line with sections 14 to 31 of the Bombay Tenancy Act.

3. It is proposed to amend the Khoti Settlement Act to carry out the objects stated in paragraphs 1 and 2 above and the following notes on the modifications sought to be effected by clause 2 of the proposed Bill explain the reasons underlying each amendment.

Modification I.—These amendments are necessary to secure that the privileged occupants pay assessment to Government through the village accountant and the rent, if any, due under the Khoti Settlement Act to the khot.

Modification II.—This amendment is necessary to bring section 8 of the Khoti Settlement Act in line with section 23 of the Bombay Tenancy Act.

Modification III.—This amendment is necessary to bring section 10 of the Khoti Settlement Act in line with section 31 of the Bombay Tenancy Act.

Modification IV.—As crop-share rents are being compulsorily commuted, retention of section 14 of the Khoti Settlement Act is unnecessary.

Modifications V and VI.—These amendments are necessary in view of the application of section 31 of the Bombay Tenancy Act to khoti villages.

Modification VII.—This amendment is necessary as the liability for payment of survey assessment so far as the lands held by the privileged occupants are concerned, is primarily imposed on the privileged occupants.

Modification VIII.—The khot has been given certain privileges in return for the services he renders in the collection of land revenue. The procedure for attachment of khoti villages under section 27 of the Khoti Settlement Act,

however, allows a khot to neglect his duty so far as collection of revenue is concerned and still claim the profits of management of the estate *minus* the cost of management at any time within 12 years from the 1st of August following the date of attachment of the estate under section 27. Government considers it necessary to discourage such dereliction of duty on the part of the khot and put some sense of responsibility into him and it is therefore proposed that if the co-sharers fail to nominate a managing khot for two successive years, the village shall lapse to Government.

Modification IX.—As it is proposed that the privileged occupants should pay survey assessment direct to Government, it is necessary that crop-share rent, which includes survey assessment, should be commuted into cash under section 33 of the Khoti Settlement Act so that the privileged occupants may pay survey assessment direct to Government and the balance, as rent, to the khot. The amendments proposed in (*i*), (*ii*) and (*iii*) (*a*) and (*b*) are designed to secure this object and that proposed in (*iii*) (*c*) is designed to bring the rules under section 33 in line with section 12 of the Bombay Tenancy Act.

Modification X.—This amendment is necessary as all privileged occupants will pay survey assessment direct to Government and will only pay the balance admissible under the Khoti Settlement Act as rent to the khot.

Modification XI.—This provides for recovery of local fund cess from the privileged occupants.

Modification XII.—These amendments are necessary in view of the introduction of record of rights in khoti villages and the imposition of the primary liability for payment of survey assessment on the privileged occupants so far as lands held by them are concerned.

27th June 1946. MORARJI DESAI.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. V OF 1946]

(As read for the third time and passed the Legislative Assembly on the 13th September 1946.)

A Bill to amend the Khoti Settlement Act, 1880.

[Mr. Morarji R. Desai, M.L.A.]

PRINTED AT THE YERAVDA PRISON PRESS, POONA 6.

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L. A. BILL No. V OF 1946

An Act to amend the Khoti Settlement Act, 1880.

(As read for the third time and passed by the Legislative Assembly on the 13th September 1946.)

(As read for the third time and passed by the Legislative Council on the 23rd September 1946)

Bom. I of 1880.

WHEREAS it is expedient to amend the Khoti Settlement Act, 1880, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Khoti Settlement (Amendment) Act, 1946.

Bom. I of 1880.

Amendment of section 7 of Bom. I of 1880.

2. In section 7 of the Khoti Settlement Act, 1880, hereinafter called "the said Act"; after the words "on the payment" the words "by them to the Provincial Government of the survey assessment from time to time lawfully due by the khot to the Provincial Government and" shall be inserted.

3. In section 8 of the said Act—

Amendment of section 8 of Bom. I of 1880.

(*i*) for the words "shall be held to be yearly tenants" the words "or if the agreement provides for a term not exceeding ten years shall be held to be tenants for a period of not less than ten years" shall be substituted; and

(*ii*) after the figures "33" the word, figure and brackets, "sub-section (*1*)," shall be inserted.

4. In section 10 of the said Act—

Amendment of section 10 of Bom. I of 1880.

(*i*) after the words "failing to pay" the words "the survey assessment or" shall be inserted; and

(*ii*) the portion beginning with the words "or does any act purporting to transfer his land" and ending with the brackets, words and figure "(except in the cases provided for in section 9)" shall be deleted.

Deletion of section 14 of Bom. I of 1880.

5. Section 14 of the said Act shall be deleted.

Amendment of section 16 of Bom. I of 1880.

6. In section 16 of the said Act, for the words "the names of the occupants thereof, and, in the case of a survey number held by a permanent tenant, whether his interest therein is transferable otherwise than by inheritance or not" the words "and the names of the occupants thereof" shall be substituted.

Amendment of section 20 of Bom. I of 1880.

7. In sub-section (*1*) of section 20 of the said Act, clause (*a*), and the brackets and letter "(*b*)" and the words "fact or" shall be deleted.

Amendment of section 24 of Bom. I of 1880.

8. In section 24 of the said Act—

(*i*) for the words "of the lands of the village minus such percentage of deduction, if any, as the Provincial Government may in each case direct" the words "for the time being of the lands of the village being lands not held by any privileged occupant and not relinquished by the khot" shall be substituted; and

(*ii*) the second paragraph shall be deleted.

Amendment of section 27 of Bom. I of 1880.

9. (*1*) The existing section 27 of the said Act shall be renumbered as sub-section (*1*) of that section and in the said sub-section (*1*) for the words "are not unanimous as to the nomination" the words, figures and letter "do not agree by a majority of all the co-sharers of the village as to the nomination or if the sharer who is so nominated is for any reason unable to serve as managing khot, and fails to delegate his duties and powers under section 31A in such time as may be prescribed by the Collector in this behalf" shall be substituted:—

(*2*) in the said section 27 the following new sub-section shall be added, namely:—

"(*2*) Where the co-sharers have, for six successive years at any time after the commencement of the Khoti Settlement (Amendment) Act, 1946, failed to nominate one of their number within the prescribed period as required by the Collector under sub-section (*1*), or to agree by a majority of all the co-sharers of the village to the nomination, or if the sharer who is so nominated has for any reason been unable to serve as managing khot, and failed to delegate his duties and powers under section 31A, within such time as may have been prescribed by the Collector in this behalf, the village shall thenceforward vest in the Crown for the purposes of the Province free from all encumbrances created by any of the co-sharers or any of their predecessors-in-title or in anywise subsisting as against any of the sharers, but without prejudice to the rights of the persons in actual possession of the lands in the village."

Bom. of 1946.

Amendment of section 33 of Bom. I of 1880.

10. (1) Section 33 of the said Act shall be renumbered as sub-section (*1*) of that section and in the said sub-section—

(*i*) in clause (*a*), for the words "the survey-assessment of his land;" the word "nil;" shall be substituted;

(*ii*) in clause (*b*), the words "the survey-assessment of his land and in addition thereto" shall be deleted;

KBS 573

(*iii*) in clause (*c*)—

(*a*) after the words "under the following rules" the following shall be inserted, namely:—

"but subject always to the deduction referred to in sub-section (*2*)";

and

(*b*) after Rule V the following new rule shall be inserted, namely:—

Reasonable rent may be determined under Bombay Tenancy Act, 1939.

"*Rule VI.*—Notwithstanding anything contained in the preceding rules, it shall be lawful for any tenant to apply to the Mamlatdar under section 12 or 14A, as the case may require, of the Bombay Tenancy Act, 1939, for determining the reasonable rent payable by him; and in any such case, the rent so determined under that Act shall, with effect from the commencement of the next ensuing revenue year, be payable by the tenant in lieu of the rent hitherto payable by him."

Bom. XXIX of 1939.

(2) In the said section 33 the following new sub-section shall be added, namely:—

"(*2*) Notwithstanding anything contained in sub-section (*1*), the amount of survey-assessment and local fund cess payable by a permanent tenant to the Provincial Government under sections 7 and 36 shall be deducted from the rent entered as payable under sub-section (*1*) whether before or after the passing of the Khoti Settlement (Amendment) Act, 1946, and the balance only after such deduction shall be payable as rent by the tenant to the khot."

Bom. of 1946.

11. In section 36 of the said Act—

Amendment of section 36 of Bom. I of 1880.

(*i*) to the first paragraph the following shall be added, namely:—

"and from privileged occupants on every rupee of the survey-assessment of their respective holdings"; and

(*ii*) the second and third paragraphs shall be deleted.

12. In section 39 of the said Act—

Amendment of section 39 of Bom. I of 1880.

(*i*) for the word, figures and letters "sections 112, 117-A, 117-B," the word and figures "section 112," shall be substituted;

(*ii*) to the first paragraph the following proviso shall be added, namely:—

"Provided that section 74 shall apply to the lands not held by a privileged occupant, and clause (*b*) of section 150 and section 153 shall apply to the lands held by a privileged occupant, in any such village.";

(*iii*) before clause (*b*) the following new clause shall be inserted, namely:—

"(*a*) section 74 shall be read and understood as if the word 'khot' were substituted for the word 'occupant'";

(*iv*) clause (*b*) shall be deleted; and

(*v*) for clause (*c*) the following shall be substituted, namely:—

"(*c*) the khot in respect of the jama of his village, and a privileged occupant in respect of the survey-assessment of his holding shall, for the purposes of section 136, be deemed to be the persons primarily responsible to the Provincial Government."

Insertion of new section 43 in Bom. I of 1880.

13. After section 42 of the said Act, the following new section shall be inserted, namely:—

Application of Act to certain areas with modifications.

"43. Notwithstanding anything hereinbefore contained, the provisions of this Act when applied to any village in the Ratnagiri or Kolaba District in which record of rights is maintained under Chapter X-A of the Bombay Land Revenue Code, 1879, shall be subject to the following modification, namely:— Bom. V 1879.

Part III containing sections 16 to 22 shall be deleted."

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. V OF 1946]

(As read for the third time and passed by the Legislative Assembly on the 13th September 1946.)

(As read for the third time and passed by the Legislative Council on the 23rd September 1946)

An Act to amend the Khoti Settlement Act, 1880.

[Mr. Morarji R. Desai, M.L.A.]

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Separate paging is given to this Part in order that it may be filed as separate compilation

PART IV

(1) Acts of the Local Legislature of the Bombay Province and (2) Acts of the Indian Legislature assented to by the Governor General.

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The following Act of the Bombay Legislature having been assented to by the Governor on the 20th November 1946 is hereby published for general information.

P. N. MOOS,
Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XXIX OF 1946.

(First published, after having received the assent of the Governor, in the "Bombay Government Gazette" on the 22nd November 1946.)

An Act to amend the Khoti Settlement Act, 1880.

WHEREAS it is expedient to amend the Khoti Settlement Act, 1880, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Bom. I of 1880.

1. This Act may be called the Khoti Settlement (Amendment) Act, 1946. Short title.

2. In section 7 of the Khoti Settlement Act, 1880, hereinafter called "the said Act", after the words "on the payment" the words "by them to the Provincial Government of the survey assessment from time to time lawfully due by the khot to the Provincial Government and" shall be inserted. Amendment of section 7 of Bom. I of 1880.

Bom. I of 1880.

3. In section 8 of the said Act— Amendment of section 8 of Bom. I of 1880.

(*i*) for the words "shall be held to be yearly tenants" the words "or if the agreement provides for a term not exceeding ten years shall be held to be tenants for

a period of not less than ten years " shall be substituted ; and

(*ii*) after the figures " 33 " the word, figure and brackets ", sub-section (*1*)," shall be inserted.

Amendment of section 10 of Bom. I of 1880.

4. In section 10 of the said Act—

(*i*) after the words " failing to pay " the words " the survey assessment or " shall be inserted ; and

(*ii*) the portion beginning with the words " or does any act purporting to transfer his land " and ending with the brackets, words and figure " (except in the cases provided for in section 9) " shall be deleted.

Deletion of section 14 of Bom. I of 1880.

5. Section 14 of the said Act shall be deleted.

Amendment of section 16 of Bom. I of 1880.

6. In section 16 of the said Act, for the words " the names of the occupants thereof, and, in the case of a survey number held by a permanent tenant, whether his interest therein is transferable otherwise than by inheritance or not " the words " and the names of the occupants thereof " shall be substituted.

Amendment of section 20 of Bom. I of 1880.

7. In sub-section (*1*) of section 20 of the said Act, clause (*a*), and the brackets and letter " (*b*) " and the words " fact or " shall be deleted.

Amendment of section 24 of Bom. I of 1880.

8. In section 24 of the said Act—

(*i*) for the words " of the lands of the village minus such percentage of deduction, if any, as the Provincial Government may in each case direct " the words " for the time being of the lands of the village being lands not held by any privileged occupant and not relinquished by the khot " shall be substituted ; and

(*ii*) the second paragraph shall be deleted.

Amendment of section 27 of Bom. I of 1880.

9. (*1*) The existing section 27 of the said Act shall be renumbered as sub-section (*1*) of that section and in the said sub-section (*1*) for the words " are not unanimous as to the nomination " the words, figures and letter " do not agree by a majority of all the co-sharers of the village as to the nomination or if the sharer who is so nominated is for any reason unable to serve as managing khot, and fails to delegate his duties and powers under section 31A in such time as may be prescribed by the Collector in this behalf " shall be substituted ;

(*2*) in the said section 27 the following new sub-section shall be added, namely :—

" (*2*) Where the co-sharers have, for six successive years at any time after the commencement of the

Bom. XXIX of 1946.

Khoti-Settlement (Amendment) Act, 1946; failed to nominate one of their number within the prescribed period as required by the Collector under sub-section (*1*), or to agree by a majority of all the co-sharers of the village to the nomination, or if the sharer who is so nominated has for any reason been unable to serve as managing khot, and failed to delegate his duties and powers under section 31A, within such time as may have been prescribed by the Collector in this behalf, the village shall thenceforward vest in the Crown for the purposes of the Province free from all encumbrances created by any of the co-sharers or any of their predecessors-in-title or in anywise subsisting as against any of the sharers, but without prejudice to the rights of the persons in actual possession of the lands in the village."

Amendment of section 33 of Bom. I of 1880.

10. (*1*) Section 33 of the said Act shall be renumbered as sub-section (*1*) of that section and in the said sub-section—

(*i*) in clause (*a*), for the words "the survey-assessment of his land;" the word "nil;" shall be substituted;

(*ii*) in clause (*b*), the words "the survey-assessment of his land and in addition thereto" shall be deleted;

(*iii*) in clause (*c*)—

(*a*) after the words "under the following rules" the following shall be inserted, namely:—

"but subject always to the deduction referred to in sub-section (*2*)";

and

(*b*) after Rule V the following new rule shall be inserted, namely:—

Reasonable rent may be determined under Bombay Tenancy Act, 1939.

"*Rule VI.* Notwithstanding anything contained in the preceding rules, it shall be lawful for any tenant to apply to the Mamlatdar under section 12 or 14A, as the case may require, of the Bombay Tenancy Act, 1939, for determining the reasonable rent payable by him; and in any such case, the rent so determined under that Act shall, with effect from the commencement of the next ensuing revenue year, be payable by the tenant in lieu of the rent hitherto payable by him."

Bom. XXIX of 1939.

(*2*) In the said section 33 the following new sub-section shall be added, namely:—

"(*2*) Notwithstanding anything contained in sub-section (*1*), the amount of survey-assessment and local fund cess payable by a permanent tenant to the Provincial Government under sections 7 and 55 shall be deducted from the rent entered as payable under sub-section (*1*) whether before or after the passing of the Khoti Settlement (Amendment) Act, 1946, and the balance only after such deduction shall be payable as rent by the tenant to the khot."

Bom. XXIX of 1946.

Amendment of section 36 of Bom. I of 1880.

11. In section 36 of the said Act—

(*i*) to the first paragraph the following shall be added, namely :—

"and from privileged occupants on every rupee of the survey-assessment of their respective holdings"; and

(*ii*) the second and third paragraphs shall be deleted.

Amendment of section 39 of Bom. I of 1880.

12. In section 39 of the said Act—

(*i*) for the word, figures and letters "sections 112, 117-A, 117-B," the word and figures "section 112," shall be substituted ;

(*ii*) to the first paragraph the following proviso shall be added, namely :—

"Provided that section 74 shall apply to the lands not held by a privileged occupant, and clause (*b*) of section 150 and section 153 shall apply to the lands held by a privileged occupant, in any such village." ;

(*iii*) before clause (*b*) the following new clause shall be inserted, namely :—

"(*a*) section 74 shall be read and understood as if the word 'khot' were substituted for the word 'occupant'" ;

(*iv*) clause (*b*) shall be deleted ; and

(*v*) for clause (*c*) the following shall be substituted, namely :—

"(*c*) the khot in respect of the jama of his village, and a privileged occupant in respect of the survey-assessment of his holding shall, for the purposes of section 136, be deemed to be the persons primarily responsible to the Provincial Government."

Insertion of new section 43 in Bom. I of 1880.

13. After section 42 of the said Act, the following new section shall be inserted, namely :—

Application of Act to certain areas with modifications.

"43. Notwithstanding anything hereinbefore contained, the provisions of this Act when applied to any village in the Ratnagiri or Kolaba Distict in which record of rights is maintained under Chapter X-A of the Bombay Land Revenue Code, 1879. shall be subject to the following modification, namely :— Bom. V of 1879.

Part III containing sections 16 to 22 shall be delected."

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

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L. A. BILL No. V OF 1946.

(*A Bill to amend the Khoti Settlement Act, 1880.*)

REPORT OF THE SELECT COMMITTEE.

We, the Members* of the Select Committee, appointed to consider L. A. Bill No. V of 1946 (A Bill to amend the Khoti Settlement Act, 1880), have the honour to report as follows :—

We have carefully considered the Bill and have made some changes herein. The reasons for the principal changes are given below against the clauses in which they occur.

Clause 2.—We have recast this clause. We have suggested that instead of inserting a new section 43 at the end of the Khoti Settlement Act, 1880, suggesting modifications in several sections of the Act, we should follow the usual procedure of amending each section of the Act by a separate clause.

Clause 2 (VIII).—We have suggested, with a view to minimising the rigour of the penalty provided by this modification, that the nomination of the managing khot by the co-sharers should be by majority of all the khots of the village instead of by unanimity as originally proposed in the Bill and that the period should be raised from 2 years to 6 years.

* *Note.*—The signatures of Mr. S. L. Karandikar and Mr. M. A. Bhaiji will be notified when received.

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Section 27(*1*) of the Khoti Act has been amended on similar lines.

Clause 2 (*IX*) (*iii*) (*b*).—We have omitted this provision as the Tenancy Act has been made applicable to khoti villages and compulsory commutation of crop share rent will consequently be feasible.

Clause 2 (*XII*) (*iii*).—This provision has been re-drafted with a view to make the wording uniform with the wording in clause (*b*) of section 39 of the original Act.

(Signed) MORARJI DESAI.
(„) D. K. KUNTE.
(„) K. F. PATIL.
(„) W. A. PARKAR.
(„) R. N. SHINDE.
(„) M. D. JOSHI.
(„) S. S. MAHAJAN.

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(„) R. N. SHINDE.
(„) M. D. JOSHI.
(„) S. S. MAHAJAN.

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Note.—Deletions made by the Select Committee are shown in square brackets and additions are shown in italics.

L. A. BILL No. V OF 1946.

A Bill to amend the Khoti Settlement Act, 1880.

(As amended by the Select Committee.)

Bom. I of 1880.

WHEREAS it is expedient to amend the Khoti Settlement Act, 1880, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Khoti Settlement (Amendment) Act, 1946.

[Bom. I of 1880.]

[Insertion of new section 43 in Bom. I of 1880.]

[2. After section 42 of the Khoti Settlement Act, 1880, the following new section shall be inserted, namely:—

[Application of Act to certain areas with modifications.]

'43. (*1*) Notwithstanding anything hereinbefore contained, the provisions of this Act when applied to any village in the Ratnagiri or Kolaba district in which sections 14 to 31 of the Bombay Tenancy Act, 1939, have come into force, shall be subject to the following modifications, namely:—]

[Bom. XXIX of 1939.]

Amendment of section 7 of Bom. I of 1880.

[I. In section 7—] *2. In section 7 of the Khoti Settlement Act, 1880, hereinafter called "the said Act",*

Bom. I of 1880.

after the words "on the payment of" the words "the survey assessment from time to time lawfully due by them to the Provincial Government and" shall be inserted.

Amendment of section 8 of Bom. I of 1880.

[II. In section 8—] *3. In section 8 of the said Act—*

(*i*) for the words "shall be held to be yearly tenants" the words "or if the agreement provides for a term not exceeding ten years shall be held to be tenants for a period of not less than ten years" shall be substituted; and

(*ii*) after the figures "33" the word, figure and brackets ", sub-section (*1*)," shall be inserted.

Amendment of section 10 of Bom. I of 1880.

[III. In section 10—] *4. In section 10 of the said Act—*

(*i*) after the words "failing to pay" the words "the survey assessment or" shall be inserted; and

(*ii*) the portion beginning with the words "or does any act purporting to transfer his land" and ending with the brackets, words and figure "(except in the cases provided for in section 9)" shall be deleted.

Deletion of section 14 of Bom. I of 1880.

5. [IV.] Section 14 *of the said Act* shall be deleted.

Amendment of section 16 of Bom. I of 1880.

[V. In section 16] 6. *In section 16 of the said Act*, for the words "the names of the occupants thereof, and, in the case of a survey number held by a permanent tenant, whether his interest therein is transferable otherwise than by inheritance or not" the words "and the names of the occupants thereof" shall be substituted.

Amendment of section 20 of Bom. I of 1880.

7. [VI.] In sub-section (*1*) of section 20 *of the said Act*, clause (*a*), and the brackets and letter "(*b*)" and the words "fact or" shall be deleted.

Amendment of section 24 of Bom. I of 1880.

[VII. In section 24—] 8. *In section 24 of the said Act*—

(*i*) for the words "of the lands of the village minus such percentage of deduction, if any, as the Provincial Government may in each case direct" the words "for the time being of the lands of the village being lands not held by any privileged occupant and not relinquished by the khot" shall be substituted; and

(*ii*) the second paragraph shall be deleted.

Amendment of section 27 of Bom. I of 1880.

[VIII. The existing section 27 shall be renumbered as sub-section (*1*) of that section, and after the sub-section so renumbered, the following sub-section shall be inserted, namely:—] 9. (*1*) *The existing section 27 of the said Act shall be renumbered as sub-section (1) of that section and in the said sub-section (1) for the words "are not unanimous as" the words "do not agree by a majority of all the co-sharers of the village" shall be substituted; and*

(*2*) *in the said section 27 the following new sub-section shall be added, namely*—

"(*2*) Where the co-sharers have, for [two] *six* successive years at any time after the commencement of the Khoti Settlement (Amendment) Act, 1946, failed to nominate one of their number within the prescribed period as required by the Collector under sub-section (*1*), or to [be unanimous as] *agree by a majority of all the co-sharers of the village* to the nomination, the village shall thenceforward vest in the Crown for the purposes of the Province free from all encumbrances created by

Bom. of 1946.

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any of the co-sharers or any of their predecessors-in-title or in anywise subsisting as against any of the sharers, but without prejudice to the rights of the persons in actual possession of the lands in the village."

[IX. In section 33—] *10. (1) Section 33 of the said Act shall be renumbered as sub-section (1) of that section and in the said sub-section—* *Amendment of section 33 of Bom. I of 1880.*

(*i*) in clause (*a*), for the words "the survey-assessment of his land;" the word "nil;" shall be substituted;

(*ii*) in clause (*b*), the words "the survey-assessment of his land and in addition thereto" shall be deleted;

(*iii*) in clause (*c*)—

(*a*) after the words "under the following rules", the following shall be inserted, namely:—

"but subject always to the deduction referred to in sub-section (*2*)'

[(*b*) in sub-rule (1) of Rule V, for the words "On an application made on or before the first day of May in any year by any tenant, whose rent is payable wholly or partly as a crop-share" the following shall be substituted, namely:—

"Every tenant whose rent is payable wholly or partly as a crop-share shall, within three months from the date of the passing of the Khoti Settlement (Amendment) Act, 1946, apply for fixing the commuted value of such crop-share. On receipt of such application or if no such application is made within the said period of three months, on his own motion";]

[Bom. of 1946.]

and

[(*c*)] (*b*) after Rule V the following new rule shall be inserted, namely:—

"*Rule VI.*—Notwithstanding anything contained in the preceding rules, it shall be lawful for any tenant to apply to the Mamlatdar under section 12 of the Bombay Tenancy Act, 1939, for determining the reasonable rent payable by him; and in any such case, the rent so determined under that Act shall, with effect from the commencement of the next ensuing revenue year, be payable by the tenant in lieu of the rent hitherto payable by him."

Reasonable rent may be determined under Bombay Tenancy Act, 1939.

Bom. XXIX of 1939.

(2) [X. The existing section 33 shall be renumbered as sub-section (1) of that section, and to] *In the said* section 33 the following new sub-section shall be added, namely :—

" (2) Notwithstanding anything contained in sub-section (1), the amount of survey-assessment and local fund cess payable by a permanent tenant to the Provincial Government under sections 7 and 36 shall be deducted from the rent entered as payable under sub-section (1) whether before or after the passing of the Khoti Settlement (Amendment) Act, 1946, and the balance only after such deduction shall be payable as rent by the tenant to the khot."

Bom. 1946.

Amendment of section 36 of Bom. I of 1880.

[XI. In section 36—]*11. In section 36 of the said Act*—

(*i*) to the first paragraph the following shall be added, namely :—

" and from privileged occupants on every rupee of the survey-assessment of their respective holdings " ; and

(*ii*) the second and third paragraphs shall be deleted.

Amendment of section 39 of Bom. I of 1880.

[XII. In section 39—]*12. In section 39 of the said Act*—

(*i*) for the word, figures and letters " sections 112, 117-A, 117-B, " the word and figures " section 112," shall be substituted ;

(*ii*) to the first paragraph the following proviso shall be added, namely :—

" Provided that section 74 shall apply to the lands not held by a privileged occupant, and clause (*b*) of section 150 and section 153 shall apply to the lands held by a privileged occupant, in any such village.";

(*iii*) before clause (*b*) the following new clause shall be inserted, namely :—

[" (*a*) in section 74, the word ' khot ' shall be deemed to be substituted for the word ' occupant ' ";] " (*c*) *section 74 shall be read and understood as if the word 'khot' were substituted for the word 'occupant'* "

(*iv*) clause (*b*) shall be deleted ; and

(*v*) for clause (*c*) the following shall be substituted, namely :—

" (*c*) the khot in respect of the jama of his village, and a privileged occupant in respect of the survey-assessment of his holding shall, for

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the purposes of section 136, be deemed to be the persons primarily responsible to the Provincial Government".

[(2) The provisions of this Act when applied to any such village in which a record of rights is maintained under Chapter X-A of the Bombay Land Revenue Code, 1879, shall likewise be subject to the following further modification, namely :—

[Bom. V of 1879.]

Part III containing sections 16 to 22 shall be deleted.']

13. After section 42 of the said Act, the following new section shall be inserted, namely :—

Insertion of new section 43 in Bom. I of 1880.

"43. Notwithstanding anything hereinbefore contained, the provisions of this Act when applied to any village in the Ratnagiri or Kolaba District in which record of rights is maintained under Chapter X-A of the Bombay Land Revenue Code, 1879, shall be subject to the following modification, namely :—

Application of Act to certain areas with modifications.

Bom. V of 1879.

Part III containing sections 16 to 22 shall be deleted."

STATEMENT OF OBJECTS AND REASONS.

No scheme of rural reconstruction or planned development can succeed unless the rural population affected thereby co-operates whole-heartedly and evinces keenness and enthusiasm in the success of such planned development. Such planning has also to be based on fairly accurate statistical record. The majority of cultivators of khoti lands in Ratnagiri district who have no fixed tenure or who are not in a position to resist their exploitation by some of the unscrupulous khots, are, as things stand at present, not in a position to take any interest in planned development of the lands in Ratnagiri district. It is also difficult to plan systematic development in the absence of the usual village statistics which are not maintained in khoti villages.

2. Government considers it necessary that the record of rights under the Bombay Land Revenue Code, 1879, and other allied village registers should, as soon as circumstances permit, be introduced in the khoti villages and the administration of the khoti villages should be put on the same efficient basis as the normal administration of Government villages. Government also considers that the rights and interests of the various classes of tenants under the Khoti Settlement Act, 1880, should be adequately safeguarded by application of sections 14 to 31 of the Bombay Tenancy Act, 1939, to the Ratnagiri district and certain villages in the Kolaba district to enable the tenants to resist any exploitation by unscrupulous landlords. The Khoti Settlement Act has to be suitably amended so as to secure to the khots their legitimate rights and just privileges while at the same time safeguarding the tenants' interests by bringing it in line with sections 14 to 31 of the Bombay Tenancy Act.

3. It is proposed to amend the Khoti Settlement Act to carry out the objects stated in paragraphs 1 and 2 above and the following notes on the modifications sought to be effected by clause 2 of the proposed Bill explain the reasons underlying each amendment :—

Modification I.—These amendments are necessary to secure that the privileged occupants pay assessment to Government through the village accountant and the rent, if any, due under the Khoti Settlement Act to the khot.

Modification II.—This amendment is necessary to bring section 8 of the Khoti Settlement Act in line with section 23 of the Bombay Tenancy Act.

Modification III.—This amendment is necessary to bring section 10 of the Khoti Settlement Act in line with section 31 of the Bombay Tenancy Act.

Modification IV.—As crop-share rents are being compulsorily commuted, retention of section 14 of the Khoti S ettlement Act is unnecessary.

Modifications V and VI.—These amendments are necessary in view of the application of section 31 of the Bombay Tenancy Act to khoti villages.

Modification VII.—This amendment is necessary as the liability for payment of survey assessment so far as the lands held by the privileged occupants are concerned, is primarily imposed on the privileged occupants.

Modification VIII.—The khot has been given certain privileges in return for the services he renders in the col lection of land revenue. The procedure for attachment of khoti villages unde r section 27 of the Khoti Settlement Act,

however, allows a khot to neglect his duty so far as collection of revenue is concerned and still claim the profits of management of the estate *minus* the cost of management at any time within 12 years from the 1st of August following the date of attachment of the estate under section 27. Government considers it necessary to discourage such dereliction of duty on the part of the khot and put some sense of responsibility into him and it is therefore proposed that if the co-sharers fail to nominate a managing khot for two successive years, the village shall lapse to Government.

Modification IX.—As it is proposed that the privileged occupants should pay survey assessment direct to Government, it is necessary that crop-share rent, which includes survey assessment, should be commuted into cash under section 33 of the Khoti Settlement Act so that the privileged occupants may pay survey assessment direct to Government and the balance, as rent, to the khot. The amendments proposed in (*i*), (*ii*) and (*iii*) (*a*) and (*b*) are designed to secure this object and that proposed in (*iii*) (*c*) is designed to bring the rules under section 33 in line with section 12 of the Bombay Tenancy Act.

Modification X.—This amendment is necessary as all privileged occupants will pay survey assessment direct to Government and will only pay the balance admissible under the Khoti Settlement Act as rent to the khot.

Modification XI.—This provides for recovery of local fund cess from the privileged occupants.

Modification XII.—These amendments are necessary in view of the introduction of record of rights in khoti villages and the imposition of the primary liability for payment of survey assessment on the privileged occupants so far as lands held by them are concerned.

27th June 1946. MORARJI DESAI.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. V OF 1946]

(As amended by the Select Committee.)

A Bill to amend the Khoti Settlement Act, 1880.

[Mr. MORARJI R. DESAI, M.L.A.]

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. V OF 1946 (A BILL TO AMEND THE KHOTI SETTLEMENT ACT, 1880)

Third Reading.

Mr. MORARJI R. DESAI: Sir, I beg to move that L. A. Bill No. V of 1946 (A Bill to amend the Khoti Settlement Act, 1880), as amended at the second reading, be read a third time and passed.

Question proposed.

Mr. KALLANGOWDA F. PATIL (Dharwar South): Sir, I beg to move the following amendment:

In sub-clause (*iii*) (*b*) of clause 10(1), after the figures "12", the words, figures and letters "or 14A as the case may require" shall be inserted.

Question proposed.

Mr. KALLANGOWDA F. PATIL: This is only a consequential amendment to bring the tenants on the Khoti tenure on a par with the tenants in other areas. As section 15 of the Tenancy Act is applicable to the Khoti tenure, it is suggested that all the facilities given under section 14A of the same Act to the tenants in other tenures should be availed of by the tenants in Khoti areas. That is all the purpose of this amendment.

Mr. MORARJI R. DESAI: I accept the amendment.

Amendment put, and agreed to.

Mr. S. L. KARANDIKAR: Sir, the Bill that is now in the final stages of discussion has to be looked at from three different points of view. There are certain arrangements introduced which seek to bring the Ratnagiri Khoti system on a par with the tenancy system prevailing in other parts of the Province. In order that the tenancy principles in different parts of the Province may be on an identical basis, certain new provisions have been introduced in the Khoti Settlement Act. Now, as regards these new provisions, I must say that whatever differences existed before they were accepted by the House, I have nothing to say about them in view of the acceptance by the Legislature of the Tenancy Bill. I say this because whatever might be the origin of the Khoti tenure, no one who has a thinking mind can say that it should always be viewed to the exclusion of what happens in other parts of the Province. And if we look at what is happening in the case of the Khoti tenure, we will find that in certain matters it contained provisions which were far ahead of the times. Therefore, on the decision of Government to introduce certain provisions in the Khoti Settlement Act in order to bring the Khoti tenure of the Ratnagiri district on a par with the tenancy system which is obtaining in other parts of the Province, I shall have nothing to say.

Two other innovations have been made in the Bill, and I shall make a few observations on them. The first innovation seeks to do away with the middlemen as such. The Khot was up to this time responsible for the collection of land revenue, even in the case of lands which were not completely under his control. By this amending Bill Government have made the tenant in a way responsible for the payment of land revenue. Is it only the first step of the policy that Government seems to have at heart of doing away with all sorts of middlemen so far as the question of land revenue is concerned? What Government have attempted is a sort of a half-way house. And I am afraid that in the actual execution of the provision, certain difficulties might have to be faced. For instance, the primary responsibility for the payment of land revenue even now rests with the

[Mr. S. L. Karandikar]

Khot, and an arrangement has been arrived at by which the tenant is made responsible for its payment. One difficulty that occurs to me is this: Suppose the tenant who is now made responsible for the payment of the land revenue and the other dues fails to pay them, and the holding has to be forfeited. What will happen ? Will the Khot have any say in the matter or not ? Can he pay the arrears and prevent the holding from being forfeited ? That is one point which strikes me and which has not been clarified in the Bill. That is why I say that the departure that Government have made in this direction is a sort of a half-way house, and it might perhaps give rise to certain difficulties in the course of its actual execution.

I now come to the next innovation. There is one clause in the Bill which has nothing to do with the tenancy system in this Province or with the question of doing away with the middlemen. That is the amendment to section 27 of the original Act. When that clause was debated upon in this House, certain remarks were made—I am ready to concede that they were made a bit jocularly—that I was trying to wriggle out of the compromise that was arrived at in the Select Committee. I may assure the House that it is not in my nature to wriggle out. If I want to say that I am opposed to something, I shall always say it boldly without attempting to wriggle out. However, as these remarks were made, I shall explain why, after the Select Committee had arrived at a certain compromise, I suggested a new point in the course of the debate in the House. When we were meeting in the Select Committee, the Bill was before the public for a few days only. Immediately the Bill was published it came up for its first reading in the House. Therefore, when we met in the Select Committee, friends from Ratnagiri could not supply me with information on which alone I could have advanced my views. I have no hesitation in admitting that I am not fully conversant with all the details of the Khoti Settlement Act. Even if a man is fully conversant with them, there are so many technical points in it for which he will have to depend upon experts and on first-hand information from people who are on the spot. And when I got information from experts in Ratnagiri, I was fully convinced that the compromise that was arrived at in the Select Committee was not going to solve the problem which Government wanted to solve. That was why I suggested a new point in the open discussion on the clause amending section 27. I would again point out to Government that what they have done is not going to achieve the object which they have in view. Of course, if they want to have a trial they are free to do it; but if they are willing to rely on experience gained by their own revenue officers and by other persons who have experience of the working of the Act, they will have to admit that they will have to proceed on the lines that I proposed to them. The nomination of the managing Khot should not be by mere numerical majority; it should be a majority of those who have a share in the village, of those who have got interest in the village. If Government study the situation, and they are willing to profit by the experience of their own officers, they can still remedy the position before the Bill is taken to the Upper House and passed into law, and thus avoid the troubles that are likely to arise.

These are the only remarks which I want to pass at the third reading, and, subject to these remarks, I support the third reading of the Bill.

Mr. MORARJI R. DESAI: Sir, I understand the feelings of my hon. Friend who spoke now, drawing my attention to some clauses of this Bill as it is passed. I have spoken on these clauses on several occasions that arose in the debates on the first

[Mr. Morarji R. Desai]

reading and the debates on the clauses in the second reading of the Bill. I do not, therefore, think that I should repeat those arguments.

Regarding the clause which provides that a village will be forfeited to Government in any case where the khots fail, for six continuous years, by a majority to appoint managing agents, I do not think that it can be called harsh. I have already said that it was a condition of unanimity before, and unanimity has been changed into a majority of all the khots. I only hope that even the smallest khot will see to his own interest and will be amenable to seeing that the property is managed by themselves, rather than that they should lose even the little that they get from the property that they possess. It is, therefore, very possible that this clause, as it has been made very stringent, will result in the khots agreeing to appoint managing agents, rather than in the khots not agreeing and the village being forfeited to Government. Six years is not a small period. It is a fairly long period for the people to see and to show a desire that they want to manage the village themselves.

No new conditions are being attached to the khots specially and they are not being invidiously treated in any manner. If there is any distinctive treatment, it is because they are governed by a special Act, and, therefore, a special legislation becomes necessary in their case. If there had been no special legislation before, it would not have been necessary to make separate provisions for them, but it is not intended to expropriate these khots by means of the provision of direct payment of assessment to Government by the tenants. If at any time it is decided that the land should remain and be owned by the person who cultivates it, then a uniform measure will be brought in to enable the tenants to purchase it from the khots or other landlords. If, then, any invidious treatment is shown, there will be cause for complaint, but there can be no cause for complaint now. The Bill is brought in merely with a view to seeing that the unnecessary hardships that are caused at present in some cases, or in many cases, to the tenants are removed. It is not intended to tar all the khots with the same brush. Nobody wants to say that all the khots are bad people and that all the tenants are good people. There are good and bad people in all sections of society. So, the khots have a proportion of good ones as well as a proportion of bad ones, as also the tenants, but when we make a law, we have got to make a law keeping in mind the bad section, because it is that section which has got to be restrained; it is that section which requires to be controlled, but that restraint and control are not going to affect any honest person, and an honest person need not be afraid at all.

I have nothing more to say, Sir. I am thankful to the hon. House for the support which it has given to this Bill, and I hope it will be unanimously passed.

Question put, and agreed to.

The Hon. the SPEAKER: L. A. Bill No. V of 1946 is read a third time and passed.

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L. A. BILL No. V OF 1946 (A BILL TO AMEND THE KHOTI SETTLEMENT ACT, 1890).

Mr. MORARJI R. DESAI: Sir, I beg to introduce L. A. Bill No. V of 1946 (A Bill to amend the Khoti Settlement Act, 1890) as read for the third time and passed by the Legislative Assembly.

The Hon. the PRESIDENT: L. A. Bill No. V of 1946 (A Bill to amend the Khoti Settlement Act, 1890) is introduced.

Mr. MORARJI R. DESAI: Sir, I beg to move that L. A. Bill No. V of 1946 (A Bill to amend the Khoti Settlement Act, 1890) be read a first time.

Question proposed.

Mr. R. N. MANDLIK (Kolaba *cum* Ratnagiri): Sir, I rise to a point of order. I submit that this Bill cannot be proceeded with for want of notice of seven days. Rule 102 of the Bombay Legislative Council Rules runs thus:—

"(1) Copies of every Bill passed by the Assembly and transmitted to the Council shall be laid on the table of the Council.

(2) After a Bill has been laid on the table of the Council under sub-rule (1) of this Rule, it shall not be necessary to make a motion to leave to introduce the same in the Council and if the Bill is afterwards introduced it shall not be necessary to publish it.

(3) At any time after copies of a Bill have been laid on the table under sub-rule (1) of this Rule, any Minister in the case of a Government Bill or, in the case of any other Bill, any member may give notice of his intention to move the Bill and thereupon the provision of Rules 81 to 96 shall, subject to the provisions of this Rule, apply."

Now, Rule 84 says:—

"84 (1) When a Bill is introduced, or on some subsequent occasion, the member in charge may move that the Bill be read a first time: Provided that no such motion shall be made before the expiry of seven clear days from the despatch to each member of a copy of the Bill with the statement of Objects and Reasons, unless the President, in exercise of his power to suspend this provision, allows the motion to be made."

I also want to draw the attention of the House to Rule 27 with regard to amendments. Clause (7) of this Rule runs as follows:—

"Notice of every amendment shall be sent to the Secretary three clear days before the date on which the motion is made."

Both the Rules are quite clear on the point, that some notice is necessary. Seven clear days' notice is necessary before a Bill is allowed to be read for a first time, and three days' notice is necessary for moving an amendment. I know that the Hon. the President has the power to waive this provision, but I appeal to the Hon. the President not to use his power in this case.

The Hon. the PRESIDENT: Under Rule 49, the President has got power either to curtail the period of notice or to dispense with it altogether.

Mr. R. N. MANDLIK: I want to appeal to you, Sir, not to allow Government to rush through the Bill in this way.

The Hon. the PRESIDENT: That would not be a point of order, but merely asking the President not to use his power to dispense with the notice.

Mr. R. N. MANDLIK: By quoting the rule and raising a point of order, I am only appealing to you, Sir. The rule is salutary and not frivolous. The hon. Members of this House are all not learned people; they may not all be also learned lawyers [*Laughter*]. When a bill is to be moved, we are sometimes required to receive instructions regarding it, and to do that we require some time, which the Hon. Minister is not willing to give us in the case of this Bill. We got a copy of the Bill at 9 p.m. yesterday.

* Bill was passed by the Legislative Assembly on Sept. 13, 1946.

The Hon. the PRESIDENT : If you like, this Bill will be read only for a first time today, and amendments to it, if any, will be taken up tomorrow. That is what the Hon. Minister suggested. Will that be convenient to the hon. Member Mr. Mandlik ?

Mr. R. N. MANDLIK : No, no, Sir. My objection is that we want more time. We represent certain people who would like to be present here to see how we represent them. [*Hon. Members : hear, hear* !].

Mr. MORARJI R. DESAI : I never knew that the hon. Members needed any such examination !

Mr. R. N. MANDLIK : Our electors would like to see how we represent them here. It may not be the case with the Congress Party ; but it is so with the other Parties.

The Hon. the PRESIDENT : It would be better if the hon. Member addresses the Chair, without paying attention to side remarks.

Mr. R. N. MANDLIK : We have to represent the views of our electors. They should have an opportunity to be present here when Bills are taken up.

An Hon. MEMBER : Where is the room for all ?

Mr. R. N. MANDLIK : There may not be room for all the electors ; but there is room for some ; even for many. Why should the hon. Member be afraid of electors being present here ?

An Hon. MEMBER : You are afraid.

The Hon. the PRESIDENT : Order, order !

Mr. R. N. MANDLIK : I would, therefore, appeal to the Chair to give a ruling in my favour, and not in favour of the dominant Party, for the reasons which I just now gave. I believe they are sound reasons, though the Congress Party may pretend to laugh at them.

Dr. G. S. MAHAJANI : Sir, I may be allowed to say a word or two on the point of order raised by my hon. Friend. I am afraid the point of order may not be sustained, but, Sir, he has made a request to you, and I have to endorse that request for this reason that the day before yesterday, after an informal discussion, we dispersed to meet on the following day on the understanding that only urgent Bills which need to be on the statute book before 1st October would be taken up, but that the Tenancy Bill, copies of which were not then ready, would not be taken up. It was only on that understanding that two of my colleagues—Sir Frederick Stones and Sir Behram Karanjia—agreed to the House being adjourned till today. I understand that my hon. Friend Sir Behram Karanjia has already fixed some appointments in Bombay and is leaving today by the three-twenty train. Whether we were right or wrong in getting that impression yesterday, I would leave it to you, Sir, to judge, but it was on that understanding that we dispersed yesterday. Moreover, there is no special hurry with regard to the Khoti Settlement Bill and the Tenancy Bill being put on the statute book. I would, therefore, appeal to the Chair to use its discretion in favour of this side and not in favour of Government.

Mr. N. J. SHAIKH : Sir, I join in the appeal made by my hon. Friends that the two Bills should not be taken up today. Copies of the Bills were not given to the hon. Members in time. Yesterday there was a hectic hurry in circulating the copies. The hon. Members have not had sufficient time to study the Bills. They should have some time to study the Bills and move amendments. I, therefore, request you, Sir, to postpone the consideration of the two Bills to some future date.

Sir ABDUL LATIF HAJI HAJRAT KHAN : Sir, I do not stress the point of order raised by my hon. Friend because the Chair has full discretion in the matter. But I would endorse what my hon. Friend Dr. Mahajani has said just now. The day before yesterday there was an informal discussion with the Hon. the Prime Minister and the hon. Member Mr. Shantilal Shah, when it was stated that the Khoti Settlement Bill and the Tenancy Bill would be taken up in the next session. Yesterday also it was suggested that only urgent Bills which have to be passed before 1st October should be taken up today. Sir, there is no urgency about the Khoti Settlement Bill and the Tenancy Bill, and there is no harm if the two Bills are taken up at some future date. The rabi season will be over at the end of May and the possession, etc.; if any, would be at that time. I, therefore, feel that these two Bills should not be taken up in this session.

Mr. N. B. KADADI (Sholapur *cum* Belgaum *cum* Bijapur) : Sir, I need not repeat the views expressed by my hon. Friends just now. As Dr. Mahajani said just now, two hon. Members of this House have left this place on the understanding that the Khoti Settlement Bill and the Tenancy Bill would be taken up in the next month. For this reason, and for the added reason that it will facilitate a fuller discussion if the Bills are taken up on a future day, I request the Chair to postpone the consideration of the two Bills.

Mr. D. V. BELVI (Sholapur *cum* Belgaum *cum* Bijapur) : Sir, I will only add a word to what has been stated by my hon. Friends. The Bill is yet to be translated into the vernacular languages. It is necessary to do that so that the masses will understand what the legislation, which is intended to be enacted for the benefit of the masses, is. There is no reason why a Bill which will affect a crore of people should be passed in such indecent haste. People have already been saying that this Council is a farce and it is necessary that this impression should be removed. Nothing serious will happen if we do not take the Bill today. So, I request you, Sir, to exercise your discretion in a judicial and fair manner.

Mr. SHANTILAL H. SHAH (Broach and Panch Mahals *cum* Surat) : Sir, with reference to what the hon. Member Dr. Mahajani has said, I wish to make it clear that no understanding of the nature mentioned by him was arrived at. After we had finished all the eight Bills on the first day there was dearth of business and we did not know what business would be placed before the House. Therefore, informally consulted the hon. Members of the Opposition. At that time the copies of the Tenancy Bill and the Khoti Bill were not circulated to the hon. Members of the House though the proposal was that these Bills might be taken up.

Then with regard to the reference made to Sir Frederick Stones, I can only say that I spoke to him yesterday and said that we would be sitting today. It is not by reason of any understanding on his part that these two Bills will not be taken up today that he is absent today.

The Hon. the PRESIDENT : May I know from the hon. Members what time they would require to consider these Bills which they have received rather late ? Can they suggest a date so that these Bills may stand over till that time and the hon. Members may get a reasonable time to study them ?

Dr. G. S. MAHAJANI (Poona *cum* Satara) : In reply to the hon. Member Mr. Shantilal Shah I would like to say that it may be we were wrong in our

[Dr. G. S. Mahajani]

impression, but nevertheless, it is true that all the hon. Members on this side carried that impression, and Sir Frederick Stones would not have made his plans, but for that impression. Whatever that be, as there would be no particular inconvenience, we suggest that the consideration of these Bills may be deferred to the 7th October, and I hope hon. Members on this side are with me when I make this suggestion.

The Hon. the PRESIDENT: Yes, we have a letter from Sir Frederick Stones.

Mr. MORARJI R. DESAI (Minister for Revenue): Sir, I am very sorry that I have no knowledge about the understanding that is being referred to. When it was suggested that these two Bills should be taken up today, it was not with the intention of hurrying these measures through, but simply to provide some work until the three Bills which have got to be passed before the 30th of September can be placed before this House. The intention was that there should not be holidays for three or four days or the hon. Members may not be idle.

In regard to the allegations that we want to rush these Bills through, I wish to make one submission. I may inform the House that I have heard deputations from almost all the districts. There were also individual representations. All these have been heard by me at great length. Besides, both the Bills have passed through the Select Committees of the Lower House, and they were discussed in the Lower House at leisure and with patience. Then again, both the Bills have been before the people of the Province for a sufficiently long time.

Taking into consideration all these things, it was suggested that the two Bills might be taken up in this House today, the first reading might be completed, and the second and the third readings might be taken up tomorrow.

In any case, there are two or three Bills which must be passed before the end of this month as the Defence of India Act expires on the last day of this month.

Mr. SHANTILAL H. SHAH: Sir, I think there should not be much objection to the first reading of the Bills because we shall be having only a general discussion on the Bills. At this stage only the principle of the Bill is to be discussed.

By the time the first reading of these Bills is over, we shall get the other Bills which we have to pass before the end of this month in any case.

Mr. D. V. BELVI (Sholapur *cum* Belgaum *cum* Bijapur): Sir, I object even to the first reading of these Bills just now.

I have no objection if we meet on the 23rd to consider these Bills in addition to those which we have to pass before the end of this month on account of the expiry of the Defence of India Act.

The Hon. the PRESIDENT: I think, on the whole, the House seems to accept the suggestion put forward by the hon. Member Mr. Belvi.

We should meet on the 23rd of September and we should defer the consideration of these two Bills till that date.

The other suggestion made from Government benches is that there is L. A. Bill No. XXVI of 1946, passed by the Lower House, and if the Minister in charge of the Bill is free it may be taken up just now.

Hon. MEMBERS: Yes, we have no objection to this.

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L. A. BILL No. V OF 1946 (A BILL TO AMEND THE KHOTI SETTLEMENT ACT, 1880).

M.O.H. Bk. Hb 145A—1

L. A. BILL No. V OF 1946 (A BILL TO AMEND THE KHOTI SETTLEMENT ACT, 1880).

Mr. MORARJI R. DESAI (Minister for Revenue): Sir, I beg to introduce L. A. Bill No. V of 1946 (A Bill to amend the Khoti Settlement Act, 1880).

The Hon. the PRESIDENT: L. A. Bill No. V of 1946 (A Bill to amend the Khoti Settlement Act, 1880) is introduced.

Mr. MORARJI R. DESAI: Sir, I beg to move that L. A. Bill No. V of 1946 (A Bill to amend the Khoti Settlement Act, 1880)* be read a first time.

Question proposed.

Mr. R. N. MANDLIK (Kolaba *cum* Ratnagiri): Sir, I rise on a point of order. My point of order is that the Bill cannot be proceeded with, because the subject-matter of the Bill is under the adjudication of a court of law in British India. Mr. Narayan Vaman Barve of Jalgaon, taluka Dapoli, district Ratnagiri, has objected to the Government's right to apply Record of Rights in his village and he has filed a suit, which is a regular Suit No. R. M. 19 of 1946, at the court of the Civil Judge at Ratnagiri, on the 4th of February 1946. He wants a declaration that Government have no right to apply Chapter X-A of the Land Revenue Code to the Khoti villages covered by the Khoti Settlement Act, 1880. He further wants to obtain a permanent injunction against Government that no entries under Chapter X-A of the Land Revenue Code be made by the officers in respect of the Khoti village owned by him. Now, if you refer to the Statement of Objects and Reasons of the Bill, paragraph 2 runs as follows:—

"Government considers it necessary that the record of rights under the Bombay Land Revenue Code, 1879, and other allied village registers should, as soon as circumstances permit, be introduced in the khoti villages and the administration of the khoti villages should be put on the same efficient basis as the normal administration of Government villages. Government also considers that the rights and interests of the various classes of tenants under the Khoti Settlement Act, 1880, should be adequately safeguarded by application of sections 14 to 31 of the Bombay Tenancy Act, 1939, to the Ratnagiri district and certain villages in the Kolaba district to enable the tenants to resist any exploitation by unscrupulous landlords. The Khoti Settlement Act has to be suitably amended so as to secure to the khots their legitimate rights and just privileges while at the same time safeguarding the tenants' interest by bringing it in line with sections 14 to 31 of the Bombay Tenancy Act."

With this end in view clause 13 of the present Bill is brought forward. I shall not read it as it is not necessary. I shall now read the plaint which is in Marathi.

*Bill published at pp. 36-41 of *Bombay Government Gazette*, Part V, dated July 3, 1946.

The Hon. the PRESIDENT : I should like the hon. Member to read the prayers in the plaint first as they are most important.

Mr. R. N. MANDLIK : They are in Marathi, and I shall read them.

वादीची विनंति अशी आहे कीं :—

(अ) मुंबइ ॲक्ट १ सन १८८० प्रमाणें कलम १ यांत लिहिलेले वादीचे खोती गांवाचें सर्व्हे व खोती सेटलमेंट झालेलें असल्यामुळें सदर गांवास लँ. रे. को. चॅप्टर १०-अ लागू करणें गैरकायदा आहे. सबब कलम १ यांत लिहिलेलें गांवाचे बाबतींत प्रतिवादीनें सन १९४५ सालीं अगर त्यानंतर तयार केलेले हक्कनोंदीचे कागद व त्यांतील नोंदी रद्दबातल आहेत व त्या वादीवर बंधनकारक नाहींत अगर कलम १ यांत लिहिलेल्या गांवांतील वादीचे कोणतेंहि हक्कावर बंधनकारक नाहींत व सदर हक्कनोंदीचे कागद तयार करविणेचे कामीं प्रतिवादीनें केलेला खर्च अगर त्यापैकीं कोणताहि अंश वादी प्रतिवादीस देण्यास जबाबदार नाहीं असा ठराव करण्यांत यावा.

(ब) कलम एक यांत लिहिलेल्या गांवासंबंधानें सन १९४५ सालीं अगर त्यानंतर तयार करविलेल्या लँ. रे. को. चॅप्टर १०-अ खालच्या कोणत्याहि कागदाची अगर त्या कागदांतील नोंदीची अंमलबजावणी प्रतिवादीनें अगर त्याच्या कोणत्याहि अंमलदारानें करूं नये अशी प्रतिवादीस निरंतरची ताकीद देण्यांत यावी.

(क) या दाव्याचा सर्व खर्च प्रतिवादीकडून देवववा.

(ड) या दाव्याचे कामीं वादीस पूर्ण दाद मिळण्यासाठीं जरूर व न्यायाचे ते सर्व हुकूम कोर्टानीं करावेत.

The Hon. the PRESIDENT : After hearing the prayers in the plaint, it seems to me that the contentions of the case are based on the existing law and the plaint makes no reference to any future legislation in connection with khots and khoti matters. The subject-matter of the proceedings of the House would be *sub judice* only if the subject-matter of the suit was the same as the subject-matter before the House. That is not the case, and so I think the House is not debarred from proceeding to enact fresh legislation. What the plaint says is that Government's action under the existing law is *ultra vires* and so the plaintiff has challenged it in a court of law. The plaint makes no reference to future legislation.

Mr. R. N. MANDLIK : The suit was filed in February last when the legislation we have before us was not even thought of.

The Hon. the PRESIDENT : The subject-matter of the legislation has thus no relevance to the prayers in the plaint. So, we shall not be discussing a matter beyond the scope of the legislature as provided by the Rules.

Mr. R. N. MANDLIK : Sir, I shall give you the authority of Rules to show that we cannot have reference to Record of Rights in the discussion as it is involved in the prayers of the plaint. I invite your attention to Rules under Part V on page 59—Questions. Rule 52 (1) runs thus :

"A question may be asked for the purpose of obtaining information on a matter of *public concern* within the special cognizance of the Minister to whom it is addressed."

[Mr. R. N. Mandlik]

Then sub-rule (2) reads :

" No question shall be asked—

(*a*) in regard to any matter which is under adjudication by a court of law having jurisdiction in any part of British India....."

Then in Rule 74 (*d*) it is provided :

" Subject to the restrictions contained in these Rules, a resolution may be moved on a matter of general public interest :

Provided that no resolution shall be admissible which does not comply with the following conditions, namely :—

* * * * * * * * *

(*d*) it shall not relate to any matter such as is mentioned in clauses (*i*), (*iv*), (*v*) of sub-rule (2) of Rule 32."

Now Rule 32 runs thus :

" (1) The matter of every speech must be relevant to the motion on which it is made.

(2) A member while speaking must not—

(*i*) refer to any matter of fact which is under adjudication by a court of law having jurisdiction in any part of British India ;....."

Thus, Sir, you will see from the provisions I have quoted that no question can be asked in this House relating to a matter which is under adjudication by a court of law. Similarly, no Resolution can be moved and no reference in the debate can be made to a matter of fact which is under adjudication. I have already read the prayers and it can easily be seen that we cannot proceed with the discussion of this Bill. It is mentioned in the prayer that it is illegal for Government to apply Record of Rights to the khoti village owned by the plaintiff. Under this Bill Chapter X-A of the Land Revenue Code is to be made applicable to khoti villages in the Ratnagiri and Kolaba districts. These matters thus being identical, it is not possible to carry on the debate on this Bill without referring to the matter which is under adjudication by the court of law at Ratnagiri.

There is no Rule saying that legislation, under such circumstances, is prohibited. By analogy, however, we can take it that when no questions can be asked, no Resolutions can be moved and no reference can be made to a matter under adjudication by a court of law. A *fortiori* no Bill can be brought in this House in regard to a matter which is under adjudication by a court of law.

A similar question had arisen in the year 1929 in the Central Legislature at the time of the Public Safety Bill. The late lamented Mr. Vithalbhai Patel was the President at that time, and it was he who raised objection to the Bill, while the Report of the Select Committee was being presented to the House, on the ground that the subject-matter of the Public Safety Bill being the same as the subject-matter in the Meerut Conspiracy trial, the Bill could not be proceeded with. He sought the opinions of his colleagues and friends in the Assembly, and in the debate that followed, the late Pandit Motilal Nehru and Mr. Srinivasa Iyengar, who were former Presidents of the Congress, took part and supported the contention of Mr. Vithalbhai Patel. Mr. Crerar, who was the mover of the Bill, said that Government would not be able to carry out its responsibilities if such a legislation could not be proceeded with simply because there was some trial going on somewhere. His contention was, however, not upheld. I shall now read to the House what the Right Honourable Mr. Jayakar and Mr. Srinivasa Iyengar said on this point at that time. This is what Dr. Jayakar (then Mr. M. R. Jayakar) said in the Central Assembly (Central Legislative Assembly

2-30 p. m. Debates, of 5th April 1929, page 2871) :

[Mr. R. N. Mandlik]

" ....Honourable Members will bear in mind that ours is a very infant body, and we have had no time in our constitutional development to consider all the little details which arise under the doctrine of necessary implication. I am free to admit that my research into this question has not enabled me to find any Standing Order which expressly lays down that the President has that power. Perhaps my other friends speaking after me, will be able to point out such a rule if it exists. But I say that the power does necessarily arise out of Standing Order 29, and I support my argument by saying that an infant constitution such as we have, has to be considered and interpreted in a very liberal spirit. If we were an old body like the British House of Commons, which has had more than 200 years to elaborate its constitution, so that every little contingency is foreseen and is provided for, and if in our constitution, this particular power did not exist, then it would have been a very strong argument against its exercise.... ".

I will now read out what the late Mr. Srinivasa Iyengar said during the course of the debate (pages 2879 to 2881 of the Central Legislative Assembly Debates of 5th April 1929) :

" ....In the first place it is assumed that, in the case of Bills, a different procedure obtains from the one which obtains in the case of questions, Resolutions and motions for adjournment. I say " No ". The familiar principle, which is stated in May, is that, ' Matters which are under adjudication in a Court of Law should not be brought forward in debate'. That principle runs through all the categories of legislative business.....Mr. President, my submission is, there are two or three well established rules.. What is new in the instance may still be governed by an old well-established principle, the principle which is derived by analogy was applied, for instance,in the Tagore case by a very eminent Judge, Mr. Justice Willes. He said there was no express principle of Hindu law applicable, but the principle was in the law of gifts perfectly well established and was by analogy applied to the will in the Tagore case. We must, in the case of Bills, apply by analogy the principle which applies to questions, motions and Resolutions. Therefore, what applies to Resolutions, what applies to motions for adjournment, I say, applies equally to Bills, and if there is any doubt upon that matter, that doubt is completely removed by the fact that the general procedure, including the procedure relating to Bills, is mentioned in Standing Order 29. Analogy is a well established head not only of exposition but of ascertaining law—and no lawyer worth his salt would ever say that a rule deduced correctly by analogy is not to be applied. Take, for instance, a Bill. The Honourable the Law Member or the Honourable the Home Member introduces a Bill dealing with particular accused persons, or say with a particular case itself, saying that such and such persons shall be held to be guilty of such and such an offence and shall be held to have been parties to such and such a conspiracy. It is perfectly open to bring in a specific Bill limited to a particular case of that description. But can it be said that, when the principle of the Bill is a matter pending adjudication before a Court of Law, the question can be brought forward in a debate on a Bill dealing with the very persons whose guilt or innocence has yet to be proved ? .....It is a preposterous thing to suggest that what cannot be made the subject of a question, Resolution or motion for adjournment, can directly be made the subject of a Bill. No lawyer can have the hardihood to say that. That is the way to test this question. Therefore, the power does undoubtedly exist. I say the Chair has got the power. It is not as if the rules of business of this House form an exhaustive Code. You know that the rules of business are not exhaustive. Supposing there were no rules of business enacted, does it mean that the President cannot lay down the procedure ? Therefore the President has got all the rights of the President unless his rights are taken away by express words. My submission is that the power of the Chair on the matter now in question is indisputable. Secondly, I agree with my Honourable friend, Mr. Jayakar, that Standing Order No. 29 necessarily implies this power—it is not only a reasonable implication but it is a necessary implication. For the canon of interpretation, Maxwell, Craies and various other authorities may be referred to. The canon of interpretation is that which must be necessarily implied as if it were enacted in the statute. It is not necessary that you should find the actual words in the section.... ".

Sir, I will now read out the ruling of the President, the late Mr. Vithalbhai Patel :

" ....It has been contended that the right to rule the motion out of order is not expressly conferred on the President by any of the Rules or Standing Orders of the Assembly. Indeed, the Law Member goes further and says that, as the Assembly and its President are creatures of the Statute, the contention and precedents of the House of Commons have no application, and that such power cannot be deduced by implication from the provisions of Rules and Standing Orders. Such a power must, according to him, be expressly given. But it is a matter of common knowledge that conventions and precedents of the House of Commons are being quoted repeatedly in the Legislative Bodies in India and acted upon. It was only last year that the Chair exercised its inherent power to disallow the introduction of a very important Bill on the ground that the course proposed was an abuse of the forms and procedure of this House and violated its proprieties. If the contention of the Honourable the Law Member is upheld and the Chair restricted to the powers expressly conferred on it by the Rules and Standing Orders of this House, the business of this House would become impossible..... For these reasons, I am of opinion that, although power to rule this motion out of order is not expressed in so many words in any of the Rules and Standing Orders, it does arise by necessary implication and analogy, and I am further satisfied that, in any case, the Chair has the inherent power to rule out a motion on the ground that it involves an abuse of the forms and procedure of this House as this motion, I hold, does. I therefore rule it out of order....."

[Mr. R. N. Mandlik]

Sir, there is no express provision in our rules as regards the course of legislation, but there is an express provision as regards Questions, Resolutions and reference to a matter under adjudication. Though there is no such express provision, by analogy, I would request you, Sir, to rule this Bill out of order.

Mr. SHANTILAL H. SHAH : The hon. Member Mr. Mandlik referred to rules 32 and 52. Now, sub-section (2) of rule 32 lays down : " A member while speaking must not—(*i*) refer to any matter of fact which is under adjudication by a court of law having jurisdiction in any part of British India ". It is clear, therefore, that rule 32 quoted by my hon. Friend Mr. Mandlik refers to a question of fact, and not to a question of law, or to a mixed question of fact and law. Under this rule, if there was a question of fact pertaining to this Bill under adjudication, then, it cannot be referred to in the debate on this Bill. The hon. Member Mr. Mandlik has not stated what was the question of fact as distinguished from the question of law which is involved in the suit and which will have to be referred to in the course of this debate.

Sir, I have just now been able to get a copy of the plaint referred to by the hon. Member Mr. Mandlik. It appears from the plaint that the whole plaint of the plaintiff is against a certain notification issued by the Government in 1944. It states :

" मुंबई ॲक्ट १ सन १८८० प्रमाणें कलम १ यांत लिहिलेले वादीचे खोती गांवचें सव्हें व खोती सेटलमेंट झालेलें असल्यामुळें सदर गांवास लँ. रे. को. चॉप्टर १०-अ लागू करणें गैरकायदा आहे. सबब कलम १ यांत लिहिलेले गांवचे बाबतींत प्रतिवादीनें सन १९४५ सालीं अगर त्यानंतर तयार केलेले हक्कनोंदीचे कागद व त्यांतील नोंदी रद्दबातल आहेत व त्या वादीवर बंधनकारक नाहींत अगर कलम १ यांत लिहिलेल्या गांवांतील वादीचे कोणतेहि हक्कावर बंधनकारक नाहींत व सदर हक्कनोंदीचे कागद तयार करविणेचे कामीं प्रतिवादीनें केलेला खर्च अगर त्यापैकीं कोणताहि अंश प्रतिवादीस देण्यास जबाबदार नाहीं असा ठराव करण्यांत यावा. "

The Hon. the PRESIDENT : Will the hon. Member l me know what is prayer No. 1 of the plaint ?

Mr. SHANTILAL H. SHAH : Prayer No. 1 says that the Government have no right o power to issue the notification.

The Hon. the PRESIDENT : Does it refer to a particular notification ?

Mr. SHANTILAL H. SHAH : Yes ; paragraph 4 of the plaint refers to it. The notification referred to is No. 9504/33 of 28th March 1944.

The Hon. the PRESIDENT : What is the second prayer in the plaint ?

Mr. SHANTILAL H. SHAH : "कलम १ यांत लिहिलेल्या गांवासंबंधानें सन १९४५ सालीं अगर त्यानंतर तयार करविलेल्या लँ. रे. को. चॉप्टर १०-अ खालच्या कोणत्याहि कागदाची अगर त्या कागदांतील नोंदीची अंमलबजावणी प्रतिवादीनें अगर त्याच्या कोणत्याहि अमलदारानें करूं नये अशी प्रतिवादीस निरंतरची ताकीद देण्यांत यावी. "

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The Hon. the PRESIDENT : So, it is not a question of fact, but it is a question of construction of an Act.

Mr. SHANTILAL H. SHAH : Yes, Sir : it is a question of the construction of an Act, and the present Bill is not at all referred to therein.

The Hon. the PRESIDENT : Is there any other prayer in the plaint ?

Mr. SHANTILAL H. SHAH : Yes, Sir ; when translated roughly, the prayer is for "such further relief as may be necessary". So, the only prayer in this plaint is that Government has no power to compel the plaintiff to pay certain expenses of records prepared by the Government in virtue of that notification as the records are not binding on the plaintiff. Therefore, Sir, as you have put it very happily, it is a question of the powers of Government in having issued a particular Notification, and, therefore, of construing it. Secondly, ...

Mr. R. N. MANDLIK : Will the hon. Member Mr. Shantilal Shah please read paragraphs 3 and 4 of the plaint ?

The Hon. the PRESIDENT : Are the copies of the plaint with both the hon. Members the same ?

Mr. R. N. MANDLIK : Yes, Sir.

Mr. SHANTILAL H. SHAH : "प्यारा ३: सन १९०३ सालीं मुंबई इलाख्याकरितां रेकॉर्ड ऑफ राइट्स ॲक्ट (मुंबई ॲक्ट नं. ४, सन १९०३) मंजूर करणेंत आला. सदरहू कायद्यांतहि कलम २ यांत लिहिल्याप्रमाणें कांहीं विशिष्ट नोंदी करणेची व त्याप्रमाणें कागद तयार करण्याची सर्व इलाख्याकरितां व्यवस्था करणेंत आली. खोती सेटलमेंट ॲक्ट लागू असलेल्या खोती गांवांत त्या ॲक्टानें अशा प्रकारच्या नोंदी करणेची व्यवस्था आधींच झालेली असल्यामुळें आणि तशा नोंदी असलेले कागद (बोटखत वगैरे) पूर्वीच तयार झालेले असल्यामुळें सदरहू रेकॉर्ड ऑफ् राइटसचा म्हणजे हक्कनोंदीचा कायदा खोती गांवांस लागू करणेंत आला नाहीं. उलट सन १९१९ सालीं तो लागू करूं नये असा ठराव प्रतिवादीनें Government Notification No. G.R. G.D. 559 of 13th December 1919 चा काढला व त्या नोटिफिकेशनला अनुसरून सन १९४२ सालापर्यंत कलम १ यांत लिहिलेल्या वादीचे खोती गांवचें हक्कनोंदीचें पत्रक म्हणून तयार करणेची व्यवस्था प्र. वादीनें केलेली नाहीं.

प्यारा. ४: कलम ३ यांत लिहिलेल्याप्रमाणें परिस्थिति असतां सन १९४४ सालीं प्रतिवादीनें Government Notification No. 9504/33 of 28th March 1944 चें काढून हक्कनोंदीचा कायदा खोती गांवांसहि लागू करणेंत येईल असें प्रसिद्ध केलें. मुंबई ॲक्ट नं. ४, सन १९०३ हा सन १९१३ सालीं रद्द करणेंत आला असून त्या ॲक्टांतील कलमें लँड रेव्हिन्यू कोडांत म्हणजे मुंबई ॲक्ट नं. ५, सन १८७९ यांत चाप्टर १०-अ म्हणून समाविष्ट करणेंत आलीं. आणि याच चाप्टर १०-अ अन्वयें कलम १ यांत लिहिलेले वादीचे गांवांत हक्कनोंदीचे कागद तयार करणेसाठीं व त्या कामासाठीं लागणारी जरूर ती

[Mr. Shantilal H. Shah]

मोजणी वगैरे करणेसाठीं प्रतिवादीनें वादीस कांहींहि न कळवितां अगर त्याकामीं वादीची संमति न घेतां फेब्रुवारी सन १९४५ च्या आरंभाचे सुमारास आपले कांहीं कामगार पाठविले. वादीस कळलेल्या माहितीप्रमाणें सदरहू कामगार वादीचे सदरहू गांवांत फेब्रुवारी सन १९४५ चे आरंभापासून सुमारें मे सन १९४५ पर्यंत काम करीत होते. व त्यांनीं निरनिराळे प्रकारची मोजणी करून कांहीं कागदपत्र तयार केले आहेत व अद्यापहि कांहीं कागद सदरहू कामगार तयार करीत आहेत. परंतु त्यांनीं कोणत्या ठिकाणची व कशाकरितां मोजणी केली व कागदपत्र काय तयार केले याबद्दलची वगैरे माहिती वादीस प्रतिवादीकडून अगर सदर कामगारांकडून मिळालेली नाहीं आणि त्यामुळें वादीस कांहीं समजण्यास मार्ग नाहीं."

That is to say, under a previous notification of the Government issued in 1919 no action was taken, because under a certain previous Act, it was considered unnecessary.

Mr. R. N. MANDLIK: I am not a lawyer, and I cannot follow exactly what the hon. Member Mr. Shantilal Shah says.

Mr. SHANTILAL H. SHAH: This suit does not raise any question of fact whatsoever. It raises only a question of law. May, in *Parliamentary Practice* at page 323, says as follows:

"Matters awaiting adjudication of a Court of Law should not be brought forward in debate".

The only matter which is awaiting adjudication in the suit is whether the Government have the power under that particular Notification to make Chapter 10-A of the Land Revenue Code applicable to Khoti villages. If they have not the power, then this suit might succeed. If they have the power, the suit will fail. There is no other question. Even if this suit succeeds, there is no prayer in the suit which relates to the present Bill. In fact, the Bill was not published when the suit was filed.

The Hon. the PRESIDENT: I would like to have more clarification. Is there a question of fact mentioned in the plaint?

Mr. SHANTILAL H. SHAH: Sir, so far as my knowledge of Marathi goes, I do not think there is any question of fact mentioned.

The Hon. the PRESIDENT: Then, is it the contention that the Notification which was issued should not have been issued, on the ground that it was *ultra vires* or on some other ground?

Mr. SHANTILAL H. SHAH: The contention is that Government had no power. Therefore, that is a question of law. And our Rule (Rule No. 52) says:

"A member while speaking must not refer to any matter of fact which is under adjudication by a Court of Law having jurisdiction in any part of British India;"

I do not think the reference to restriction on questions is relevant, but I do admit that limitation on debate is a general limitation which might affect the debate on a Bill also. But as that limitation is about questions of fact and not on questions of law, I submit that this House is competent to proceed with the Bill,

[Mr. Shantilal H. Shah]

though questions of law may be pending in courts of law regarding the competency or otherwise of the Legislature to pass this Bill. If it is ultimately held that the Legislature was not competent——

The Hon. the PRESIDENT : I am sorry to interrupt the hon. Member. The point I want to know is whether the plaint refers to any future legislation to be made or it merely refers to the Acts aleady in existence.

Mr. SHANTILAL H. SHAH : The suit as filed refers only to the Acts then existing. It refers to the Land Revenue Code and to the Khoti Act. It does not refer to any other legislation, intended or existing. In fact, the suit was filed in February 1946.

Mr. MORARJI R. DESAI : Four months before the Bill.

Mr. SHANTILAL H. SHAH : The date of the publication of the Bill is nowhere in July. I have not got the exact date. But I think the Bill was first published sometime in July.

Mr. R. R. BAKHALE : 27th of June.

Mr. MORARJI R. DESAI : Sir, may I say that the matter is very simple ? The civil suit does not relate to the point whether this Government has power to enact certain legislation, and——

Mr. D. V. BELVI : It does.

Mr. MORARJI R. DESAI : It does not. It only relates to the construction of the law as it then existed, and it does not question the power of Government to enact such legislation at all.

Mr. D. V. BELVI : Sir, I had no intention to speak on this Motion——

The Hon. the PRESIDENT : Order, order ! I gave the hon. Members a chance to speak before the Minister was going to reply.

Mr. D. V. BELVI : The Hon. Minister rose all of a sudden.

The Hon. the PRESIDENT : In future, I will put the question to the Members whether anybody wants to speak, and then the Hon. Minister in charge of the Bill will speak. Let us proceed in accordance with the Rules. However, the hon. Member Mr. Belvi may now speak.

Mr. D. V. BELVI : Sir, I had no intention of intervening in this debate, but I find that an attempt is being made by the hon. Member Mr. Shantilal Shah to make a sort of a distinction between this case and the case that was decided by the late Honourable Mr. V. J. Patel at Delhi. We all know what the attempt of the Hon. Minister in piloting this Bill is. He says plainly that he wants to introduce all the sections of Chapter X-A of the Land Revenue Code into the Khoti villages and the plaint in the suit clearly challenges Government's right——

Mr. SHANTILAL H. SHAH : Under the Notification.

Mr. D. V. BELVI : May be under the Notification, or anything else. The plaint prays that the court should declare that Government has no right to introduce the provisions of Chapter X-A into his villages, and the Hon. Minister in charge of the

[Mr D. V. Belvi]

Bill says that all the provisions of Chapter 10A are to be introduced bodily into the Khoti villages. Now, is it not plain that what is prayed for in the civil suit is exactly the position taken up by the Hon. Minister in charge of the Bill ? I for one do not find any distinction between the two. If the Hon. Minister is in a hurry to proceed with this legislation, the matter is different. But speaking on the basis of precedents, Government cannot proceed with this Bill so long as that litigation is pending there, and so long as the civil court has not given its decision. The matter is one of great principle, and it is very strange that it is argued that the plaint contains no reference to this Bill. How can reference to a piece of legislation be made when it is yet in the womb of time ? Was it ever anticipated that such a Bill would be introduced in the month of June or July 1946 ? The plaintiff in the suit was not a prophet. He could not divine what the intentions of Government would be in future. As the matter now stands, the only question at issue is whether Government has or has not the power to introduce Chapter 10A of the Land Revenue Code into the Khoti villages. One party maintains that Government has no such right, the other party maintains that it has the right, and who is to decide the question if not a civil court ? The matter is different if, in spite of this, Government proceeds with the Bill. But that will only show the obstinacy with which legislation is being enacted in this House.

Mr. MORARJI R. DESAI : Sir, my hon. Friend was very unkind in saying that he would consider me to be very obstinate if I differed from him in interpretation. That shows the attitude that he adopts towards everything that I have to say. All I would request him is to be reasonable, and to consider the question more dispassionately. The question is whether Government has the right to legislate on this point. That is not the question at issue in that suit at all. The question at issue in the suit is that as the law then existed, Government had no right to introduce the Record of Rights which Government wanted to do at the time. That is all that is challenged in the suit, and nothing more than that. Whether Government has the right to legislate or not is a matter of interpretation of the Government of India Act, and I think the Government of India Act does not in any way prohibit us from enacting this legislation. We are, that is to say, this House is, perfectly competent to enact this legislation. If every such suit is going to bar the introduction of Bills, I think no Bill can be proceeded with, because a suit can be easily instituted, and it can go on for a long time, thus hampering the progress of legislation altogether. I do not think that is the intention of any Rule.

Sir, this issue was raised in the Lower House also. There, of course, a ruling was given and the Bill was proceeded with, and ultimately passed.

Mr. R. N. MANDLIK : Sir, Mr. Crerar had argued in a similar way, but he was overruled. If you will permit, I should like to read extracts from his speech, and you will find that he has stated what our Hon. Minister has said in regard to powers of Government in respect of legislation. This is what he says :

" As a matter of practical importance, I would venture to impress upon the attention of the House an argument which has been heard once already and which I desire to emphasise, and it is this : that if the view be taken that, in no circumstances, may this House be asked to legislate on matters touching on matters which are, for the time being, *sub judice* then the Government of this country and this Legislature might be deprived of the means of carrying out one of its greatest and most fundamental responsibilities, that is the responsibility of maintaining public security in this country."

[Mr. R. N. Mandlik]

The Law Member, Sir Bojendra Mitter, had also argued in the same fashion. This is how he argued:

"The situation must arise when some people are under arrest and trial, and upon the basis of their crimes or similar crimes, further powers are wanted. If you deny the Government the right to come to the Legislature or the Legislature the power to legislate, or to deal with the emergent situation, upon the objection raised by the Honourable Pandit, it will paralyse the hands of the Government, will paralyse the hands of the Legislature to deal with the emergent situation."

All these points were overruled by the President. Pandit Motilal Nehru conceded the general right of Government, but he says:

"Now, in this particular case, while conceding the general right of the Government to bring forward any piece of legislation they desire, and at any time they desire, I submit that such discretion of the Government must be subject to the rules and the Standing Orders and of the principles underlying those Rules and Standing Orders."

Sir, I have referred already to the Rules and the doctrine of analogy, and I would now request you to give your patient consideration to what has been said in this House. I am not a lawyer as you are, Sir, and I would request you to argue my case in your mind on my behalf before you give your ruling.

4 p.m.

The Hon. the PRESIDENT: The hon. Member is very modest, but he has really argued his point very ably. Even if he were a lawyer and were to argue his case in the way he did, he would have been still credited with great ability. The hon. Member has argued very thoroughly and patiently the *pros* and *cons* of the question which require careful consideration on my part. I would, therefore, defer giving my reasons for the decision I have come to later on.

The point on which I want elucidation is whether the plaint contends any point of fact or law. I am going to read the plaint for myself, but so far as I have understood, I do not think the plaint contends that Government have no power to legislate further in regard to khoti matters.

Now supposing the Act, as it stands, is defective; then I can understand that it is reasonable to argue that the defect cannot be cured during the pendency of the suit, that being one of the prayers in the plaint. But here I do not think that the present Bill seeks to cure any defect mentioned in the prayers in the plaint. As the Bill does not seek to cure any defect which is the subject-matter of the suit, there cannot be any objection to the present Bill being proceeded with. Therefore, I want to know whether there is a defect, in the first place, in the law as it exists and which is the subject-matter of the suit and, in the second place, whether it is a defect which cannot be cured.

Mr. R. N. MANDLIK: Sir, I should like to know how clause 13 of the Bill will be moved without making any reference to the subject-matter in the suit. This clause reads as follows:

"Notwithstanding anything hereinbefore contained, the provisions of this Act when applied to any village in the Ratnagiri or Kolaba District in which Record of Rights is maintained under Chapter X-A of the Bombay Land Revenue Code, 1879, shall be subject to the following modification, namely:—

Part III containing sections 16 to 22 shall be deleted."

This legislation is meant to apply the record of rights to certain khoti villages in the Ratnagiri district, and that same point is at issue in the plaint. I do not understand how Government can move this clause without any reference to the matter under adjudication.

The Hon. the PRESIDENT : Supposing you have got to refer to the past history of the legislation, it is a different matter which is not prohibited. Nobody here, I think, would argue that this cannot be done. If there is a defect and an incurable defect, then I can understand your point. I do not think that that is so. The Bill may, therefore, be proceeded with for the moment, and I shall give my reasons for my decision later on, after going through the plaint and the facts mentioned just now.

Mr. R. N. MANDLIK : Sir, I have to raise another point of order. I am sorry I have to do it.

My point is that the Bill is *ultra vires* under section 299 of the Government of India Act, 1935. The section runs thus :—

"299. (1) No person shall be deprived of his property in British India save by authority of law

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section 'land' includes immoveable property of every kind and any rights in or over such property, and 'undertaking' includes part of an undertaking."

There are, Sir, clauses in the Bill which are of a confiscatory nature. Bombay Act No. I of 1880, which is the original Khoti Act .....

The Hon. the PRESIDENT : I did not want to interrupt the hon. Member, but I should like to remind him that he will keep in mind the provisions of section 299 which he has read while referring to the provisions of the Bill.

Mr. R. N. MANDLIK : The Khot is the proprietor of the khoti village. Whenever any land in the khoti village in possession of a tenant was to be sold, the khot's consent was necessary. Now this Bill takes away the right of the khot to give his consent. The provisions of the Bill give the right to the tenant to sell or transfer his land without the consent of the khot.

The Hon. the PRESIDENT : Is that the subject-matter of the Bill ? Where is the provision ?

Mr. R. N. MANDLIK : Section 10 provides for that.

This Bill takes away the right of the khot to give his consent. The Khot is the proprietor of the soil, and this right is being confiscated without any compensation. I submit that Government has no right to do anything of the kind under the provisions of section 299 of the Government of India Act, 1935.

The other comment which I wish to make is that Act I of 1880, the Khoti Settlement Act, was a compromise legislation. At that time many suits were pending, and a Khoti Commissioner was appointed to enquire into the matter. As a result of that enquiry a compromise was arrived at and the khoti Act is the embodiment of that compromise. What I want to point out is that the compromise

[Mr. R. N. Mandlik]

was a bilateral measure—an Act passed with the consent of the Khots. The present Bill, however, is unilateral and is contrary to the principle of the original Act. Here the annual tenancy is made a tenancy for 10 years, and even if the khot wants to cultivate his own land he cannot claim back his land under the present Bill. That is the right he is being deprived of without any compensation.

For these reasons I think the present Bill is *ultra vires* of section 299 (2) of the Government of India Act, 1935.

The Hon. the PRESIDENT: If section 299 (2) is to apply, it must be anacquisition of land under this Bill for public purposes. Is Government acquiring any land under this Bill for any public purpose? May I know what the hon. Member Mr. Shantilal Shah has to say?

Mr. SHANTILAL H. SHAH: Sir, in my opinion, this is not a case of acquisition of land for a public purpose. But the hon. Member Mr. Mandlik will have no faith in my opinion unless he pays my fees for the opinion.

Mr. R. N. MANDLIK: It is not the practice of this House to pay fees.

Mr. SHANTILAL H. SHAH: In the original Act the consent of the khot for transfer or sale of land by a tenant was necessary, and this right is being taken way by the present Bill.

Sub-section (2) of section 299 refers to the compulsory acquisition for public purposes of any land etc. Here there is no compulsory acquisition of land. If that were so, then the law must provide for payment of compensation.

Sub-section (3), which refers to a Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, also does not come in the way inasmuch as the Governor's sanction has been obtained to the introduction of the Bill.

The Hon. the PRESIDENT: It seems to be clear enough that both the sub-sections, viz. sub-sections (2) and (3), are no bar to the introduction of this piece of legislation.

Mr. D. V. BELVI: Sir, under the present Bill, the right of the khot to receive his rent in kind is to be abolished. The object of the Hon. Minister in charge of the Bill is that rent, as far as possible, should be recovered in the shape of cash, or, if it is to be recovered in kind, the amount must have been definitely settled, but there is to be no share in the crops. The right the khot had hitherto enjoyed of having a share in the crop is proposed to be abolished or modified under the proposed Bill. When such a right is to be modified, I submit, Sir, that it is necessary to give compensation to the owner of the land. That is another point which I request the Chair to take into consideration before giving its ruling on the point of order raised.

Mr. SHANTILAL H. SHAH: I take it that the hon. Member Mr. Belvi has got a copy of the Government of India Act with him. In that case, he will see that the previous sanction of the Governor is necessary only when ———

Mr. D. V. BELVI: I am talking of general expropriation.

The Hon. the PRESIDENT: The point is that if one's right in the property is sought to be taken away, then only ——

Mr. MORARJI R. DESAI: Sir, is it a point of order?

Mr. R. N. MANDLIK: Sir, let me draw your attention to the provisions of sub-section (*5*) of section 299, which lays down: "(*5*) ..... 'land' includes immoveable property of every kind and any rights in or over such property". Under the proposed Bill, a khot is deprived of his right to give his consent. He is deprived of his right to cultivate his own land.

Mr. MORARJI R. DESAI: Giving consent is no right.

The Hon. the PRESIDENT: I would draw the attention of the hon. Member Mr. Mandlik to the wording of the sub-section referred to by him. If he reads the section again, it will be clear that, to invoke the provisions of the said sub-section, both property as well as rights thereto must be affected. The provisions would not apply to a case where only rights are affected.

Mr. MORARJI R. DESAI: Sir, there is no public acquisition of any property in this case, and, therefore, the provisions of sub-section (*2*) of section 299 do not apply. To comply with the provisions of sub-section (*3*), the previous sanction of the Governor has been obtained in July last.

The Hon. the PRESIDENT: The point of order raised by the hon. Member Mr. Mandlik is overruled. Therefore, the Hon. Minister in charge of the Bill may proceed with the first reading of the Bill.

Mr. MORARJI R. DESAI: Sir, in the course of the point of order raised, two purposes of the Bill were stated and debated upon. This Bill seeks to do several things. At present, the assessment is payable by the khots to Government, and the khots recover it from their tenants. This duplicate agency of collecting the land revenue is not a convenient method. Therefore, it is now provided in this Bill that the survey assessment should be paid direct to Government by the tenants of khots; and, if in addition to the assessment any rent is to be paid by the tenants to the khots, it should be paid by the tenants directly to the khots. So, by this provision the khot loses nothing whatsoever. He is not put to any loss by this provision. It only makes matters more simplified, and saves the bother to the khot of collecting the land revenue for Government.

The second provision is about the annual tenants of khots. The provisions of the Tenancy Bill, as last amended and passed by the Assembly—and it will soon come up for consideration before this House—are going to be applied to this class of tenants. According to those provisions, no tenant will be an annual tenant hereafter. He will be always a 10-year tenant at least. Every annual tenant will henceforward be considered a ten-year tenant. Of course, a khot can give a longer lease, but he cannot give a lease shorter than for ten years.

The third provision seeks to dispense with the need of the consent of the khot for the transfer of tenancy rights. Probably, this concession to the khot was meant to continue his general rights and to ensure smoother and better relations. But, in course of time, it was observed that this right was being utilised by the khots for getting more money from their tenants whenever the latter wanted a transfer. That is why it is necessary to remove this consent, and the removal of the consent

[Mr. Morarji R. Desai]

does not take away any money—not even a pie—from the Khot. On the other hand it removes the harassment of the tenants.

Then, the record of rights is going to be applied to the Khoti villages. At present, in the absence of the record of rights, we do not get the necessary statistical information which is necessary for the proper execution of all the rights of the tenants and also of the khots. A proper regulation of the provisions of this and other Acts has become difficult. That is why the record of rights is proposed to be introduced in Khoti villages.

Clause 9 of the proposed Bill seeks to amend section 27 of the Khoti Settlement Act. At present, in every village in the Ratnagiri district, khots do not come to a settlement in the matter of having a managing khot, with the result that the village has to be managed by Government from year to year. Within twelve years, at any time, they may choose to exercise this right and get their profits, without exerting themselves at all. In the absence of a managing khot, Government has to incur a large expenditure for collecting the extra money from the tenants. Government, therefore, does not want to continue this position any longer. That is why it is provided in this Bill that if in any village the khots, by a majority, fail to appoint a managing khot continuously for six years, then the village lapses to Government, and the khots lose all their rights. The Bill seeks to ensure that the khot exercises his rights and carries out his responsibilities. In the original Bill the provision was that the appointment of a managing khot should be by the unanimous vote of the khots. That provision has now been removed, and it has been provided that a managing khot can be appointed by a majority of the votes of khots. This is one provision in the Bill which, to some extent, affects the existing rights of a khot. But it does so only if the khots fail to exercise their rights continuously for six years. If the khots fail to carry out their responsibilities for as long a period as six years, I do not see why the management of the village should be continued with them at all. Hence the need for such a provision.

Provision has also been made in this Bill for the compulsory commutation of the crop share of the rent. In many cases rents have been commuted, but there are cases in which they are not. Such cases create a lot of difficulty. There is a difference of opinion in the assessment of crops, and the shares to which the khots are at times entitled, and it creates several difficulties and leads to the creation of several records. In order to obviate that position, it is necessary that the crop share should be removed and commuted into a cash rent. That does not mean that the khot is going to be put to any loss. All that is going to happen is that the crop share will be commuted into a rent either in cash or kind. There cannot be any reasonable objection, in these days, to having a provision for bringing down rents payable by tenants to a reasonable level wherever the rents are found to be high. This provision has been made in the Tenancy Bill.

These, in short, are, Sir, the provisions of the amending Bill, and I hope the hon. House will pass the Bill unanimously.

Mr. R. N. MANDLIK (addressed the House in Marathi):

नामदार मंत्रीसाहेबांनीं आतां जें भाषण केलें त्यामध्यें हें बिल सर्वांनीं एकमतानें मंजूर करावें अशी विनंति केली असून तें तसें होईल अशी आशा प्रदर्शित केली आहे. परंतु ही आशा प्रदर्शित करतांना त्यांना खास जाणीव आहे कीं हें बिल या सभागृहामध्यें

[Mr. R. N. Mandlik]

एकमतानें पास होणें शक्य नाहीं. ज्यावेळीं हें बिल प्रसिद्ध करण्यात आलें त्या वेळेपासून सर्वत्र जमीनदारवर्ग आणि खोतवर्ग यांच्याकडून या बिलाला विरोध करण्यांत येत आहे. मी स्वत: खोत नाहीं परंतु खोतांच्यातर्फे निवडून आलेला असल्यामुळें त्यांचें म्हणणें काय आहे तें आपल्यापुढें मांडणें व त्याच विचार आपल्यापुढें मांडणें हें मला आवश्यक वाटतें. परंतु ही संधी आपण गमावाल अशी मला आशा वाटत नाहीं. कारण आतांपर्यंतचें या बिलाबाबत आणि कूळकायद्याबाबतचें आपलें वर्तन पाहिलें म्हणजे या कायद्याबद्दलचें आपलें मत आपण कायमचें बनवून ठेविलें आहे असें वाटतें. कोणीं कांहीं सांगितलें तर त्याचा योग्य विचार करण्याची आपल्या मनाची स्थिति राहिलेली नाहीं. त्यामुळें हा विरोध करावा किंवा नाहीं असेंहि मनांत आलें. परंतु आपलें कर्तव्य आहे तें बजाविलें पाहिजे व आपले विचार आपल्यापुढें मांडावे या हेतूनें मी या बिलावर बोलत आहे.

थोड्या दिवसांपूर्वी आपल्याकडे बेळगांवचें एक डेप्युटेशन आलें होतें त्यावेळीं आपलें जो कांहीं दृष्टिकोन दिसून आला तो केवळ कूळकायद्यापुरताच होता असें नाहीं. खोती बिलाबाबत आपणांकडे आलेल्या शिष्टमंडळास आपणाकडून जी वागणूक मिळाली त्याप्रमाणेंच या बिलाबाबत आपला दृष्टिकोन आहे, व त्याबद्दल आमचीं मनें विषण्ण झालीं आहेत. त्या शिष्टमंडळाच्या मुलाखतींतील कांहीं उतारे मी आपल्याला वाचून दाखवितों.

(Substance of the above in English.)

The Hon. Minister expressed the hope that this Bill would be passed unanimously, but I do not think it is possible in view of the strong opposition of the landlords to this Bill. On this occasion I wish to read out the petition of the Belgaum deputationists that was presented to the Hon. Minister. I was not allowed to read it on the previous occasion, as it was then considered to be irrelevant. Now I think I can safely read that petition as it relates to the subject for discussion today.

Mr. MORARJI R. DESAI: They did not mention this Bill. They had nothing to do with this Bill. The document which the hon. Member Mr. Mandlik wishes to read out has been published without my consent and without my knowledge. It contains only statements taken out of their context, or half-truths.

3-30 p. m.

The Hon. the PRESIDENT: So, it is not on this Bill?

Mr. R. N. MANDLIK: No, it is not on this Bill, but on the Tenancy Bill, and I think this is relevant. Both the Khoti and the Tenancy Bills are, so to say, twins, and the report that I intend to read shows the attitude of the Hon. Minister.

The Hon. the PRESIDENT: On this Bill? On what?

Mr. R. N. MANDLIK: On any Bill. (*Laughter.*)

The Hon. the PRESIDENT: Is it the report of the deputation?

Mr. R. N. MANDLIK: Yes; and it is very interesting.

The Hon. the PRESIDENT: May be. But it must be relevant. If the hon. Member so desires, I would read it myself, but not in the House. If the report has any bearing on the Bill which is before the House, then I can allow the hon. Member to read it out, but not otherwise. I cannot allow irrelevant documents being read out in the House. If the hon. Member so desires, he may pass on the document to me.

(Mr. Mandlik handed over the document to the Hon. the President.)

The Hon. the PRESIDENT: This has no reference even to the Tenancy Bill. The only points mentioned are the basis for arriving at the figure of one-third and one-fourth. It is said that this is arbitrary. Then Clause 12 of the Tenancy Bill provides such and such things. Obviously, these have nothing to do with the Bill under discussion.

Mr. R. N. MANDLIK (in Marathi):

कुळकायद्यामधली १४ ते ३१ हीं कलमें खोती बिलामध्यें आलीं आहेत तेव्हां ते उतारे याठिकाणीं वांचून दाखविण्यास काय हरकत आहे? कांहीं झालें तरी आतां सांगितलेल्या शिष्टमंडळाचा प्रश्न येथें काढल्यामुळें निदान एवढा तरी परिणाम झाला कीं खोत व नामदार मंत्री यांच्यामध्यें जी चर्चा झाली तिचा प्रसिद्ध झालेला रिपोर्ट बरोबर नाहीं असें त्यांच्याकडून आपणांला समजलें. आपण उतारे वाचूं नये असें सांगितलें तेव्हां मी त्याबद्दल जास्त आग्रह धरीत नाहीं.

या खोतीसंबंधीं मी थोडासा इतिहास सांगतों. कोकणामध्यें रत्नागिरी जिल्ह्यांत असा कांहीं भूप्रदेश आहे कीं त्या ठिकाणीं पूर्वी केवळ जंगल होतें. सुमारें ५०० वर्षांपूर्वी त्या ठिकाणीं जंगलाशिवाय लोकांची वस्ती नव्हती अशा वेळेला हे खोत तेथें आले व त्यांनीं वस्ती केली. आपल्याबरोबर खोतांनीं शेतकरी लोकांना नेलें. आपला पुष्कळ पैसा खर्च केला व तेथील जंगलांची तोड केली. अशा रीतीनें त्यांनीं कोकणांत वसाहत केली. पुष्कळ वेळां असें सांगण्यांत येतें कीं खोत हे केवळ वसुली कामगार असून फक्त वसुलीचें काम करतात पण हें म्हणणें चुकीचें आहे. ज्या गांवचे ते खोत आहेत त्या गांवचे ते मालक आहेत हें स्पष्टपणें सिद्ध झालेलें आहे. त्यांच्या सनदांतील एक दोन उतारे मी आपणाला वाचून दाखवितो.

"परमुलखी कुळें आणून महामुरी केली. गांवांत कुळभरणा करून व शेताची बांधबंदिस्ती चांगली करून सरकारदस्ताची उगवणी करीत आलो. त्याच्यावर पैका खर्च झाला. गांव पडीत झाले कुळभरणा नाहीं. गांवच्या दस्ताची उगवणी होत नाहीं. गांव गरीब झाला. यास्तव सरकारी आबादीवर नजर ठेऊन त्यांना खोती दिली असें"

(Substance of the above in English.)

In the Ratnagiri District there is some land which was formerly merely a jungle. For 500 years there was no population there. It was these Khots who were responsible for bringing these jungle lands under cultivation. They were actually given Sanads by Government in respect of their right of ownership of their lands.

Mr. R. N. Mandlik : यालाच पोषक असे ब्रिटिश अधिकाऱ्यांच्या जुन्या रिपोर्टीतील उल्लेख मी वाचून दाखवितों :—

In 1837, Mr. Glass remarked :

"In the villages purely Khoti the proprietary right to the land centres in the Khot."

Captain Wingate, the Commissioner, found on enquiry (1851) that the rights of Khots appeared to fall very short of an absolute proprietorship of the soil. Mr. Turquand declared in 1856 that "they are equitably entitled to be considered proprietors". He further observed :

"His proprietary rights are further proved by his exercise of the various functions of a proprietor such as ousting tenants, expending capital on the improvement of the land, demanding labour rents, enjoying manorial rights, cultivating land without paying Government revenue, assessing the jack trees in the Kardes holding, remitting a portion of the rent in cases of poverty or loss."

After a number of such reports, Government declared in their Resolution No. 1832 dated 18th May 1860 that :

"The Khot has the right of settling with Government in the gross and deriving a profit by sub-letting the lands to others".

Subsequently in Resolution No. 3765 dated 24th August 1861, Government declared :

"Our khots have a hereditary right to realise the revenue and manage the lands of their villages upon which they pay land Tax to Government. Consequently in accordance with the definition laid down in section 3 (Reg. XVII of 1827) the khot is of that class of our agricultural subject who is and ought to be looked upon as the occupant with whom the Government are called upon to make the settlement."

मुसलमानी व मराठी अंमलामध्यें या खोतांचे व्यवहार सुरळीतपणें चालत होते. परंतु सन १८१८ मध्यें इंग्रजी राज्य महाराष्ट्रामध्यें सुरू झालें व तेव्हांपासून ही घडी बिघडूं लागली व खोत हे त्यांच्या गांवचे मालक नसून फक्त वसुलीचा अधिकार त्यांना आहे अशी वृत्ती सरकारी अधिकाऱ्यांची दिसूं लागली. पुढें यांबाबतींत सरकारी अधिकाऱ्यांची एक चौकशी कमिटी नेमली गेली. या कमिटीच्या रिपोर्टीतील कांहीं भाग मी आपणांस वाचून दाखवितों :—

(*Substance of the above in English.*)

(In the days of the Moghul and Maratha Rulers the rights of these Khots were recognised by the Rulers. But since the year 1818, when British Rule was established in India, the Government introduced the idea that these Khots were not the owners of their lands. Government actually appointed a Committee to inquire into the matter as to how far Khots can exercise their right of ownership of their lands.)

Mr. R. N. Mandlik : The Report of the Khoti Commission was submitted to Government on 8th February 1875. The Commission's remarks are to the effect that the only person who can be considered to have the rights of occupancy under the Survey Act is the Khot himself :

"The position of the Khots, Sanadi or non-Sanadi, is thus that of the superior holders with the same rights, conditional on the payment of assessment over his estate as against Government as the occupant of the survey number is defined by section 36 of the Survey Act. It follows that he has full rights subject to the provisions of the Survey Act over all lands included in his estate, which are unincumbered by the rights of holders subsidiary to his and that on the lapse of such rights the lands affected by them lapse to Khot and not to Government."

[Mr. R. N. Mandlik]

खोती कमिशनाच्या रिपोर्टानंतर खोत व सरकार यांच्यामध्यें बऱ्याच वाटाघाटी झाल्या व सन १८८० सालीं पहिला खोती कायदा पास होऊन सरकार व खोत या दोघांच्या समजुतीनें या प्रश्नांचा निकाल लागला. या कायद्याप्रमाणें कूळ, खोत व सरकार यांचे परस्पर जे हक्कसंबंध ठरले गेले आहेत त्यांतील मुख्य कलमें खालीं लिहिल्याप्रमाणें आहेत :—

" (१) खोती गांवचा सर्व सारा खोतानें दिला पाहिजे. हा सारा वेळोवेळीं वाढविण्याचा सरकारास हक्क आहे.

(२) जमीन कसणाऱ्या गांवांतील कुणब्यांचे या कायद्याप्रमाणें चार वर्ग केले आहेत :—

(अ) पहिला वर्ग निव्वळ धारेकरी लोकांचा, म्हणजे ते जमिनीचे मालक असून जमिनीवर आकारलेला फक्त सारा खोतास द्यावा त्यांची जमीन काढण्याचा अगर त्यांजपासून अर्धेल अगर तिर्धेल घेण्याचा खोतास हक्क नाहीं. या वर्गांत अर्थातच खोताच्या पूर्वी गांवांत ज्यांनीं जमिनी संपादन केलेल्या होत्या तेवढेच लोक येतात.

(ब) दुसऱ्या प्रतीच्या लोकांस धारेकरी म्हणतात. पण त्यांत आणि पहिल्यांत भेद इतकांच कीं, त्यांनीं सरकारी सारा व सदर साऱ्यापैकीं दर रुपयास सुमारें दोन आणे या भावानें जास्ती पैसा खोतास द्यावा. व अशा रीतीनें रुपयाला दोन आणे खोताला जास्त दिले म्हणजे अर्धेल तिर्धेल देण्याचें कारण नाहीं, अथवा खोतास त्यांची जमीन काढतां येत नाहीं. अ आणि ब या दोनहि वर्गांतील कुळांचा त्यांच्या जमिनीवरील हक्क वंशपरंपरेनें चालणारा असून सदर जमीन पाहिजे त्यास विकत देण्याचा हक्क आहे.

(क) तिसऱ्या वर्गांतील कुळांस कायमचीं अथवा जुनीं कुळें म्हणतात. यांजपासून भातजमिनीच्या उत्पन्नापैकीं निम्मे व वरकसजमिनीच्या उत्पन्नापैकीं तिसऱ्या हिश्शापर्यंत घेण्याचा खोतास हक्क आहे. यापेक्षां जास्ती घेतां कामा नये. कमी घेतलें तरी चालेल. कुळांकडून जमीन काढण्याचा खोतास हक्क नाहीं. कुळाचा हक्क वंशपरंपरा परंतु जमीन विकण्याचा मात्र त्यांस हक्क नाहीं.

(ड) चवथ्या वर्गांतील कुळास उपरीं कुळें म्हणतात. यांच्यापासून आपआपसांत ठरलेल्या करारांप्रमाणें लागेल तितकें कमजास्त उत्पन्न घेण्याचा खोतास अधिकार आहे, व कुळाची जमीनहि त्याजकडून तो पाहिजे तेव्हां काढूं शकतो. उपरी कुळाची संख्या कमी म्हणजे शेंकडा ५ या प्रमाणानें आहे. "

सन १८८० चा हा कायदा पास होण्यापूर्वी खोतांनीं सरकारवर दावे लावले होते. परंतु पुढें खोतांबरोबर याबाबतींत तडजोड करून सरकारनें हे दावे खोतांस परत घेण्यास सांगितलें आणि त्याप्रमाणें ते मागे घेतले गेले. त्यानंतर कित्येक वर्षे खोत, कुळें व सरकार यांचे

[Mr. R. N. Mandlik]

संबंध सलोख्याचे होते. पुढें देवगड तालुक्यांत सरकारनें दस्त वाढविला आणि असा प्रश्न उत्पन्न झाला कीं अशा रीतीनें ठरलेल्या दस्तापेक्षां जास्त घेण्याचा सरकारला जर हक्क आहे तर तो खोतालाहि आहे कीं नाहीं आणि त्याबाबत एक बिल आणलें गेलें. या बिलाच्या बाबतींत खोतांच्या हक्कासंबंधानें 'केसरी'त लोकमान्य टिळकांनीं सहा लेख लिहिले. त्यांतील कांहीं उतारे वांचून दाखवितों.

"ना. खरे हे पायांत बोचलेला फक्त कांटाच काढणार होते, पण सरकारास तें न खपून त्याऐवजीं त्यांनीं पाय कापून टाकण्याच्या कायद्याचा मसुदाच कायदेकौन्सिलपुढें आणला आहे. वस्तुतः पाहतां अशा रीतीनें खोत लोकांचे हातपाय वगैरे अवयव निरनिराळ्या वेळीं कापून काढण्यापेक्षां त्यांचे डोकेंच कापून टाकण्याचें बिल जर सरकार कायदेकौन्सिलपुढें आणील तर आमच्या मतें फार चांगलें होईल. जुन्या मॉरलक्लास बुकांत भूतदयेचा एक धडा आहे, व त्यांत असें लिहिलें आहे कीं, कोणास मारून टाकणें असल्यास एकदम मारून टाकावें, हालहाल करून मारूं नये. हा नियम अर्थातच मांसाहारी लोकांचा आहे. तथापि त्यांतल्या त्यांत ही भूतदयेची पायरी आहे असें जर आपण कबूल केलें तर जी गोष्ट आपणांस कर्तव्य आहे ती त्वरित आणि एका झटक्यासरशी करावी, यांतच खरें शौर्य अथवा प्रामाणिकपणा आहे असें म्हणण्यास हरकत नाहीं. हल्लींच्या प्रसंगीं मुंबई सरकारचें वर्तन याच्या अगदीं विरुद्ध आहे व जी गोष्ट त्यांस न्यायानें अथवा न्यायाच्या कोर्टामार्फत करून घेतां येत नाहीं, तीच गोष्ट न्यायाचा आव आणून नुसत्या दांडगाईनें करण्यास सरकार प्रवृत्त झालें आहे. करितां, ही दांडगाई कितपत चालण्यासारखी आहे, आपणांस त्याचे विरुद्ध कांहीं प्रतिकार करण्यासारखा आहे कीं नाहीं, असल्यास तो कोणता ह्याहि प्रश्नांचा आपल्यास येथें विचार केला पाहिजे. आमचें असें मत आहे कीं, ही दांडगाई करण्याचा सरकारास अधिकार नाहीं, व मागें ज्याप्रमाणें सरकारावर फिर्यादी करून खोत लोकांस आपले हक्क शाबीत करून घेतां आले, त्याप्रमाणेंहि आतांहि करणें कदाचित् भाग पडेल. नवीन हक्क उपस्थित करणें हें रेव्हिन्यू खात्याचें काम नव्हे."

श्री. डी. व्ही. बेलवी : लोकमान्य खोत होते काय ?

श्री. आर. एन्. मंडलीक : मला माहीत नाहीं ; पण असावेत.

"कुळांकडून अर्धेल तिर्धेल घेण्याचा खोताचा जो हक्क आहे तो सरकारास कधींहि कमी करतां यावयाचा नाहीं. निदान त्या हक्काचा पूर्ण मोबदला तरी खोतास दिला पाहिजे. कुळांची स्थिति चांगली आहे कीं नाहीं, हें पाहण्याचें सरकारचें किंवा दुसऱ्या कोणाचेंहि काम नाहीं. पुण्यांत भिकार पुष्कळ आहे म्हणून येथील सावकाराच्या घरांतील पैसे उचलून त्यांस वांटण्याचा ज्याप्रमाणें सरकारास हक्क नाहीं, त्याचप्रमाणें खोतां गांवांतील कुळांची स्थिति चांगली नसल्यास खोतास बुचाडून त्याच्या वसुलीची खैरात करण्याचा सरकारास अधिकार नाहीं. हा प्रश्न हक्काचा आहे. भूतदयेचा नाहीं. रत्नागिरी जिल्ह्यांतील कुळांबद्दल नुकतेंच

[Mr. R. N. Mandlik]

साहेबांस कींव येत असेल व त्यांच्या तंबूवर लंगोटी नेसून आलेल्या कुणब्यांबद्दल जर त्यांचें अंतःकरण खरोखरच द्रवत असेल तर त्यांनीं आपल्या खिशांतील पैसे त्यांस खुशाल वांटावे, त्याबद्दल कोणाचींहि तक्रार नाहीं, इतकेंच नव्हें तर त्यांच्या औदार्याबद्दल व रत्नागिरी जिल्ह्यांतील रयतेच्या कळकळीबद्दल त्यांचें आम्हीं मोठ्या आनंदानें अभिनंदन करूं; पण रत्नागिरी जिल्ह्यांत रयत भिकारी आहे म्हणून खोताच्या खिशांतील पैसे काढून रयतेच्या खिशांत घालण्याची जी युक्ति न्यूजंटसाहेबांनीं काढिली आहे ती मात्र आम्हांस पसंत नाहीं. रत्नागिरी जिल्ह्यांत खोत नको असला तर तो काढून टाकण्यास एकच मार्ग आहे. तो हा कीं, खोताचें जें उत्पन्न असेल तितकें व्याज येईल अशा बेतानें त्यास पहिल्यानें सरकारनें रक्कम देऊन त्याचे हक्क विकत घ्यावे, आणि मग ते हक्क हळूहळू कुळांस विकत द्यावे किंवा कुळांबद्दल सरकारची खरोखर दयार्द्रबुद्धि असल्यास फुकट द्यावे. आयर्लंड देशांतील जमीनदार व कुळें यांच्या संबंधांचा पार्लमेंट सभेंत जो मागें वादविवाद झाला होता, व त्यासंबंधानें ग्लॅडस्टनसाहेबांनीं जो कायदा पास करून घेतला आहे, त्यांतहि हेंच तत्त्व विलायत सरकारनें मान्य केलें आहे. खोत जमिनीचा किंवा गांवाचा एकप्रकारें मालक आहे असें म्हटल्यावर दुसरा न्याय संभवतच नाहीं. आणि खोत एक प्रकारचा मालक आहे ही गोष्ट हायकोर्टापर्यंत भांडणें होऊन आतां निर्विवाद सिद्ध झालेली आहे."

"कुळांकडून खोतास दरवर्षी उत्पन्नाच्या मानानें अर्धेल किंवा तिर्धेल मिळत जावी यांतच वास्तविक पाहतां दोघांचेंहि हित आहे. अशा व्यवस्थेनें एखादे वर्षी पीक जास्त आल्यास त्याचा फायदा ज्याप्रमाणें खोतास मिळतो, त्याचप्रमाणें एखादे सालीं शेताचें उत्पन्न कमी झाल्यास त्या मानानें कुळावरचेंहि ओझें त्या सालीं कमी होतें. सारांश दरवर्षी होईल तें उत्पन्न निम्मेनिम किंवा दोन हिस्से व एक हिस्सा असें वाटावयाचें असा नियम असल्यानें कोणासहि नक्त साऱ्याचें जसें ओझें वाटतें, तसें या अर्धेलीचें अथवा तिर्धेलीचें वाटत नाहीं. शेतांत दोन कणसेंच उत्पन्न झालीं तर खोत त्यांतलें एकच घेणार, नांहींतर त्यांतलें कांहीं नाहीं. नक्त सारा ठरविला म्हणजे मात्र तो दरसालीं दिला पाहिजे. मग उत्पन्न होवो वा न होवो. नक्त साऱ्यापेक्षां शेताच्या उत्पन्नाचा कांहीं भाग दरसाल देणें शेतकऱ्यांस जें अधिक सोईचें वाटतें त्याचें कारण हेंच होय. व सन १८७६ सालीं खोतीसंबंधानें जो एक सरकारी ठराव प्रसिद्ध झाला आहे त्यांतहि अशा व्यवस्थेपासून रयतेस होणारा फायदा सरकारनें कबूल केला आहे."

"गरीब लोकांस दोनपैसें जास्त मिळाल्यास ते पाहिजे आहेत; पण त्याकरितां ज्याप्रमाणें त्यांस चोरी करण्याचा कायद्यानें अधिकार दिलेला नाहीं, त्याचप्रमाणें त्यांच्यासाठींच कां होईना पण खोताच्या खिशांतील पैसे काढून ते त्यास देण्याचा सरकारास हक्क नाहीं."

"तशांत सर्वच खोत कांहीं श्रीमंत नाहींत. खुद्द न्यूजंटसाहेब यांनींच आपल्या भाषणांत असें सांगितलें आहे कीं, खोतीगांवच्या खोतीचे हिस्से पाडून कोणी पैशाचा तर कोणी पैचा वतनदार अशी स्थिति आलेली आहे. अशाप्रकारें गरीबीस आलेल्या खोताच्या तोंडांतील

[Mr. R. N. Mandlik]

घांस काढून तो दुसऱ्या कोणास तरी देण्यांत काय पुरुषार्थ आहे, हें आम्हांस तरी समजत नाहीं. मग जर समजूतदार व आपल्या हक्काकरितां भांडणारे असे खोत काढून त्यांच्याऐवजीं अक्षरशून्य कुळें तेवढीं रहावीं इतकाच हें बिल करण्यांत जर सरकारचा हेतु असेल, तर मग या बिलापेक्षां दुसरी कांहींतरी युक्ति काढून एकदम सर्व खोतलोक मागें हबशाच्या राज्यांत वहिवाट होती त्याप्रमाणें गोणत्यांत घालून बुडवून टाकल्यास फार चांगलें होईल."

"रत्नागिरी जिल्ह्यांतील कुळांस तरी रोख रुपये देण्यापेक्षां निम्मे उत्पन्नच देणें अधिक सोईवार वाटेल असें आम्हांस वाटतें, व सरकार हल्लीं ज्या हेतूनें बिल तयार करीत आहे तो हेतु तडीस न जातां कुळांस सरकारास एक, तर खोतास दोन असे रुपये रोख देण्याचे भाग पडल्यास कुळाची सर्व इस्टेट लवकर खोताकडे गहाण पडून लवकरच अग्रिकल्चरिस्ट्स रिलीफ ॲक्ट मात्र रत्नागिरी जिल्ह्यास लागू करण्याची पाळी येईल."

"सन १८८० सालीं जो एकमेकांच्या समजुतीनें कायदा पास झाला तो बदलण्यास जर आज सरकार तयार झालें आहे, तर आज पास केलेला कायदा आणखी दहापंधरा वर्षांनीं सरकार बदलणार नाहीं कशावरून? सन १८८० च्या कायद्यांत तडजोड हे शब्द कोठें नमूद केलेले नाहींत, म्हणून तो कायदा एकमेकांच्या विचारानें पास झालेला नाहीं असें म्हणण्यास ज्याप्रमाणें ना. देसाई तयार झाले आहेत त्याप्रमाणेंच पुढेंहि हल्लींच्या कायद्याबद्दल आक्षेप घेण्यास त्यावेळचा सरकारी नोकरींत असलेला एखादा देसाई निघणार नाहीं कशावरून? याकरितां हल्लीं जर कांहीं तडजोड करून अखेर निकाल लावावयाचा असेल तर त्याप्रमाणें सरकारापासून नव्या सनदा खोत लोकांनीं घेतल्याखेरीज राहूं नये."

पुढें सन १९२५ सालापर्यंत खोत व कुळें यांच्यांत फारशीं भांडणें अथवा तंटे झालेले दिसून येत नाहीं. त्या वेळीं जुन्या कायदेकौन्सिलांत रावबहादूर वोले व सुर्वे यांनीं एक बिल आणलें होतें. अशी नेहमीं ओरड केली जाते कीं खोत कुळांवर जुलूम करतात. पण त्यांत कांहीं अर्थ नाहीं. कायद्यानेंच खोतांवर अंशीं कांहीं बंधनें घातलेलीं आहेत कीं त्यांना जुलूम करतां येणें शक्य नाहीं. तीं काय बंधनें आहेत तीं मी आपल्याला वाचून दाखवितों.

"....the cash rents were fixed either arbitrarily by the Officers, or by consent of parties. The cash rents vary from 3 times the assessment to one and one-fourth times and in some cases even lower. The khots were put to a very heavy loss; several articles in newspapers were published, but all to no purpose. Thus at present the relations of the khots and tenants are fixed and all other cases such as "veth" *i.e.*, forced labour, "Nangar veth" *i.e.*, forced free ploughing of fields, and several others were not only abolished but were declared unlawful (section 35), and naturally punishable under the Indian Penal Code. The khots have to keep accounts, give written receipts and maintain village records failing which they were made liable to pay a fine not exceeding Rs. 100 (section 15). In this way all the forethought, precautions, equities and sound principles of tenancy legislation have been brought to bear upon the khots to avoid any ill-treatment that could possibly be anticipated to reduce the tenants to poverty....".

त्याचप्रमाणें दुसरा उतारा वाचून दाखवितों.

"....Government must deprecate strongly the actions of those who have misled a poor and ignorant peasantry into entertaining such chimerical ideas. At the time of settlement which led to the enactment of Act 1 of 1880 it was agreed that permanent occupancy would be confined to tenants who had cultivated continuously for the 20 years previous to 1865; the enquiries were made publicly in the

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presence of the khots and tenants and the former were given a definite assurance that no new tenant rights would accrue in future unless they were formerly granted by the Khots themselves. To that agreement Government adhered and the Collector should be instructed to issue a proclamation informing the tenants accordingly..... "

कुळांच्या दारिद्र्याचें खापर खोतांच्या डोक्यावर फोडण्यांत येतें. परंतु तसें करणें अन्यायाचें आहे. खोती पद्धतींत बदल केला किंवा ती बुडविली म्हणजे शेतकऱ्यांचें दारिद्र्य जाईल किंवा त्यांच्यांतील असंतोष नष्ट होईल हें खरें नाहीं. बडे सरकारी अधिकारीच या बाबतींत काय म्हणतात तें पहा. त्यांच्या रिपोर्टींतील उतारे मी वाचून दाखवितों.

" ....As described by Captain Wingate in his report in 1852, the soil of the country is miserably poor of a stiff, ferrunginous clay often mixed with gravel. Ratnagiri Collectorate is naturally poor with the exception of a few inconsiderable strips of fertile lands along the banks of its rivers, the soil is miserably sterile and quite incapable of, under any circumstances, supporting a thriving agricultural population. The country too is over-peopled and the wretched poverty of the peasants is in real part attributable to this cause. After considering various causes of the poverty of the people Captain Wingate gave his opinion that "no change in the Khoti system would remove the poverty of the District which was the result of the pressure of the population on a poor soil ". The same opinion has all along been expressed by a number of Officers and leaders. It is quite significant to note that the Government expressed their views in their Resolution No. 2083 dated 21st July 1926 in the same strain at paragraph 2 of the Resolution. 'So far as Ratnagiri is concerned it is clear that the root causes of the discontent among the tenantry are two, one economic and the other legal. First is the pressure upon the land, and more particularly upon the rice land, due to the large and increasing population of the District, which affects both tenants and Khots. The tenants are affected by the extreme sub-division of the holdings and the increased competition for land which both reduce means of subsistence per head of population and in the case of the tenants-at-will, tend to force up the rates of rent; while the increase in the number of khoti sharers make it impossible for them to reduce their demands and where they are numerous, leads to the harassment of tenantry under the claims of a multiplicity of masters'. Thus the causes of discontent among the poor peasantry are quite independent of the khoti system and it is only arguing in a circle to seek abolition of the same. It is a wrong notion that most of the khots are Brahmins. There are Maratha khots, Mahomedan khots, Mahar khots and khots of all castes and creeds.... "

Mr. V. S. DONGRE: Which class of khots are predominant?

Mr. R. N. MANDLIK: Non-Brahmins are predominant. Does the hon. Member want to contradict me? He is silent now. (*Laughter*).

Mr. MORARJI R. DESAI: Non-Brahmins are not predominant among the khots. I would contradict the hon. Member Mr. Mandlik.

Mr. V. S. DONGRE: Now, the hon. Member Mr. Mandlik is silent.

Mr. R. N. MANDLIK: I cannot contradict what the Hon. Minister says offhand. I will first gather the necessary information and then contradict him.

खोत म्हणजे श्रीमंत आणि ते कुळांवर जुल्म करतात अशीच सरकारची समजूत झालेली दिसते. परंतु वस्तुस्थिति तशी नाहीं. खोतांमध्यें गरिबांचीच संख्या अधिक आहे. १ रुपया आणि २ रुपये दस्त भरणारे खोतच पुष्कळ आहेत. फक्त १०-१५ खोत श्रीमंत आहेत. त्यांच्या व्यतिरिक्त बहुतेक खोत अवघा शंभर रुपये दस्त भरणारे आहेत. अशा स्थितीमध्यें ज्या खोतांना आपला गांव सोडून पोट-भरण्याकरितां बाहेरच्या गांवांत जावें लागतें त्यांना श्रीमंत अगर जुलमी कसें म्हणतां येईल? कुळें व शेतकरी यांच्या दारिद्र्याचें कारण खोत लोक आहेत असा नेहमीं आरोप केला जातो. अनेक सार्वजनिक व इतर सभांतून अशीं भाषणें मी ऐकलेलीं आहेत; परंतु तशी परिस्थिति नाहीं. रत्नागिरी

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जिल्ह्यांत कां दारिद्र्य पसरलेलें आहे या गोष्टीचा विचार सरकारी अधिकाऱ्यांनीं केलेला आहे. त्याबद्दलचे उतारे मी वाचून दाखविलेच आहेत.

आतां या बिलावर अधिक बोलण्यासारखें कांहीं आहे असें मला वाटत नाहीं. त्याचप्रमाणें मी जे उतारे वाचून दाखविले त्यांतून जरूर ती टीका या बिलावर झालेलीच आहे ती सर्व लक्षांत घेऊन नामदार मंत्र्यांनीं जें योग्य वाटेल तें करावें. लोकमान्यांच्या याच विषयावरील लेखांतील जे उतारे मी वाचून दाखविले त्यांच्याकडे ना. मंत्रीसाहेब विशेष लक्ष पुरवितील अशी मला आशा आहे. त्या उताऱ्यांवरून लोकमान्य हे जणुं काय ना. मंत्र्यांच्या प्रस्तुत बिलावरच टीका करीत आहेत असें भासतें. ते किती श्रेष्ठ प्रतीचे द्रष्टे होते हेंहि त्यावरून सिद्ध होतें. मागच्या बिलावर लोकमान्यांनीं टीका केली तिचा कौन्सिलांत त्या वेळीं पाठिराखेपणा करणारे ना. अच्युत भास्कर देसाई हे डेप्युटी कलेक्टर होते. पुढेंहि खोतांचा आघात करणारा असाच दुसरा कोणी तरी देसाई निघेल असें जें भविष्य लोकमान्यांनीं आपल्या लेखांत केलें तें तंतोतंत खरें झालेलेंहि आपण पहात आहों. या बिलाचे जनक माझ्या समोर बसले आहेत तेहि एक देसाईच आहेत. (हंशा) लोकमान्यांच्या या अचुक भविष्याबद्दल आश्चर्य वाटतें. म्हणूनच माझी ना. देसायांना विनंति आहे कीं, लोकमान्यांच्या टीकेचा योग्य विचार करूनच त्यांनीं जें करणें तें करावें.

प्रस्तुत बिलासंबंधीं रत्नागिरीच्या खोतांकडून जे अर्ज आले आहेत त्यांतील कांहीं टीकात्मक भाग येथें वाचून सर्वांच्या नजरेला आणण्याचा माझा विचार होता. परंतु त्याचा कांहीं उपयोग होणार नाहीं हें दिसत असल्यामुळें व मलाहि आतां थकवा वाटत असल्यामुळें मी आपलें भाषण पुरें करतों.

(*Substance of the above in English.*)

It is often said that the Khots are responsible for the poverty and the present pitiable condition of the tenants. This is a wrong argument. The majority of Khots are poor and are unable to maintain themselves on the income of their lands and are sometimes compelled to leave their villages and go to other places for earning extra income. I have already read out relevant extracts to support my argument, and pointed out how Government is encroaching upon the rights of the Khots. Now it is for Government to take a decision and make the Bill less oppressive to the Khots.

Mr. V. M. VEDAK (Kolaba *cum* Ratnagiri) : Sir, I rise to support the amending Bill before the House. The hon. Member Mr. Mandlik has already traced the history of the khoti system. I would, however, like to say a few words regarding the khoti system. The hon. Member Mr. Mandlik has already told us that the khoti system is a very old system, and that it was in existence even before the advent of the Adilshahis of Bijapur. One Mr. Bailey has stated in his report that the origin of khots is not easy to trace. I represent the same constituency viz., Kolaba-*cum*-Ratnagiri, as my hon. friend Mr. Mandlik. In both these districts, the khoti system has been in vogue since long in villages on the border line of the ancient kingdoms of the Adilshahis, of the Maratha State of Janjira and of

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the Moghul dominions. As and when there were devastations in these places, great difficulty was experienced in the cultivation of land. Therefore, the lands were given to certain persons who looked after their cultivation. My hon. Friend Mr. Mandlik said that great pains were taken, large capital was invested and much labour was put in in cultivating these lands. But the question is: whose labour was so put in and whose blood was so poured? It will be seen that there are Government reports on this sort of land tenure from very old days. In 1821, Mr. Chaplin, the Commissioner, in his report dated 21st November 1821, admits the status of khots as zemindars of Bengal. He says:

"Whatever be the amount of assessment, the khot alone is answerable for it to Government. He farms the lands at that rate and lets them out to the best advantage to the ryots. Nor has the ryot any right to it except upon the terms upon which he can agree with the khot."

Khots got lands from the Kings or Nawabs who were ruling the territory then, and they leased the lands out to tenants at very high rents. These tenants cultivated the lands putting in great labour, and they also poured their blood over the land. Afterwards, when the British came to power, the question about the Khots' right to lands came to the forefront. Before then, villages after villages were generally given to the highest bidders, and these bidders came to be known as khots. The officers of the British Government realised that the tenants who cultivated the khoti lands were very poor, and that they were under the thumb of the khot, and, therefore, they began thinking how to protect these tenants. The Government then appointed certain officers to investigate into, and report on, the whole question, and Mr. Dunlop sent in his report in 1822. On that report, Government issued a Resolution No. 435, dated 25th August 1826, and it is stated in that as follows:—

"It is in the interest both of the Government and the people to weaken the power of khots and that object can only be accomplished by a survey as you have proposed."

At that time there were no surveys at all, and unless the land was surveyed, assessment could not be fixed. So the survey system was introduced at that time. The Court of Directors were convinced that the khots exercised great powers and used them tyrannically. They, therefore, decided to devise ways and means of at least restricting the high rents that the khots were exacting from tenants, and introduced two categories of tenants. They decided that the tenants who were cultivating the same lands for a very long time should be considered as permanent tenants, and the tenants who were cultivating lands for short periods should be considered as annual tenants. Regulation XVII of 1827 was passed mainly for this purpose. It also laid down that a survey system should be introduced. It imposed a cess upon the khots, and held that the lands were given to the khots only as farmers of revenue and not as absolute owers of land. Then in 1865 the Bombay Survey and Settlement Act, now called the Khots Leases Act, was passed.

However, complaints from the tenants continued, and as a result of the complaints of the tenants from the Anjanwel taluka of the Ratnagiri district, Government appointed one Mr. Coles to make a full and searching enquiry into the whole question. He made that enquiry and came to the conclusion that there was some misunderstanding on the part of the Government officers who considered the khots as absolute owners of land. He suggested that an Act should be passed definitely laying down the rights of the khots and the tenants. At that time, the

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conditions of the tenants in the two districts were very deplorable. Owing to the all-round poverty prevailing in these two districts, Ratnagiri and Kolaba, and owing to the absence of any industries and other sources of employment, the relations between the khots and the tenants were never cordial.

After some years Government appointed one Capt. Wingate to go into the question again, and he made certain suggestions. He suggested that the khoti system should be abolished. If it were not possible to abolish the system altogether, he suggested an Act should be passed, or at least certain rules should be made, to define the relations between the khots and the tenants. Government considered that report and appointed another officer called Mr. Reaves. He reported that the khots were only farmers of revenue, and they were not owners of land; in other words, they were only responsible for the collection of revenue on behalf of Government. Then, later on, a Commission was appointed, called the Khoti Commission, and after its repot the Khoti Settlement Act of 1880 was passed.

Now, my hon. Friend Mr. Mandlik says that the khots are absolute owners of land In this connection, there was a case (Ganapti *vs.* Secretary of State for India, 26 Bom. L. R. 754). The point at issue in that case was whether the khots of the Kolaba District were regulated by the Khots [Leases] Act of 1865. Under sections 37 and 38 of that Act, certain conditions for *kabulayats* were laid down. Government had prepared one standard form of *kabulayat* in which certain new conditions were incorporated. Ultimately, the High Court held that Government had no right to impose any new conditions in their lease. In that judgement the learned Chief Justice says as under:

"A khot's interest in the khoti village is limited, not absolute. He possesses in some measure a proprietary right. He is an occupant with all rights and liabilities affecting such a status. The khot has to secure to Government the payment of the village revenue, while the village lands which he has to manage in accordance with the restrictions mentioned in the kabulayat fall under three distinct items, *viz*:—

Dharekari lands the tenants of which have a transferable and heritable right paying dhara alone to the khot.

Khot-nishat lands which are either in the hands of permanent occupancy tenants or tenants with less permanent right paying Faida to the khot and the Government assessment.

Khot-khasgi lands, private lands in the hands of the khot of which he can make such use as he pleases."

From all this it will be seen that the struggle between the khots and the tenants has been going on for a very long time. As I said, the condition of the tenants in the Ratnagiri and the Kolaba districts is very deplorable. There the khots are still considered as absolute owners of land. They are in fact all in all there. The tenants only know the khots as their masters to whose wishes and sweet will they have to bow down. My hon. Friend Mr. Mandlik has said that formerly there was *veth*, but that has now been abolished and made punishable. Despite this, Sir, if you visit any village in either Ratnagiri or Kolaba, you will find that the tenants there at this moment are under the thumb of the khots.

Now, what does the amending Bill seek to do? It goes only a step further than the Act of 1880. My hon. Friend said that the Act of 1880 was merely a compromise between the khots and the Government. Sir, this Act was passed 60 or 65 years back. The world has progressed much since then. Now, there are many changes in many systems, and nobody would like this khoti system, which

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is a remnant of the feudal system of old days, to continue any longer. The present Bill only seeks to modify certain duties of the tenant, in that the tenant will now pay his assessment not to the khot but to the Government. If the khots claim that they are the benefactors of tenants, then there is no real need or cause for any complaint for them. Up to now whatever they collected from the tenants they paid to Government; now if the tenants pay that money to Government direct, I do not know how the status of the khots is affected by that. The main point is this: At present the tenant is under the impression that the khot is the sole master of the land, and unless the cause of that impression, namely, the right of the khot to take assessment from the tenant, is taken away, the tenant will not be conscious of the real status of the khot. The Bill seeks to do that, and, as the khots feel that this right which they enjoyed for a very long time is being taken away by Government, they are against this amending Bill.

The next reform which will be introduced will be that every tenant will be considered a ten-year tenant, because certain provisions of the Tenancy Act will be made applicable to the khoti villages. This provision is very healthy and absolutely necessary at the present time. When so many new ideas are coming into vogue, we must march with the spirit of the times, and the remnant of the fedual system should be abolished as early as possible. Of course, at present we are not in a position to abolish the whole khoti system, and, therefore, this Bill which is a very healthy measure, should be enacted as early as possible.

Then a word about these managing khots. As we know, in the Ratnagiri district there are many khots possessing only an infinitesimal portion of khoti land. Some of the khots do not even know what extent of land they have; they have no interest in it. They have simply got a pride that they are the khots of certain villages; only that pride is there, but there is nothing substantial in their hands. I think that pride should go now. In many cases in the Ratnagiri district the lands of these khots are so small that it is impossible to cultivate them, or even to collect any rent. When this is the state of affairs, I think it is the duty of Government to come forward and to remedy it, and the rights which the khots have been enjoying for a long time should now come to an end.

The Hon. the PRESIDENT: If the hon. Member is likely to take long, we shall adjourn for tea now and re-assemble at 5.

(Recess from 4-30 to 5 p.m.)

Mr. V. M. VEDAK: Sir, when the House rose for tea, I was pointing out that the present Bill brought in by the Hon. Minister is not a very drastic measure, but is only one step further than the Act of 1880. In 1936, the Maharashtra Provincial Congress Committee had appointed a Peasant Enquiry Committee which toured round both the districts of Ratnagiri and Kolaba and enquired into the conditions of the tenants and the agricultural class. About the khots and khoti system the Report says thus:

"The Khoti tenure as it prevails has no scientific basis whatsoever; its character and content have been determined, more or less empirically, according to the expediency of the State. It sanctions the exactions by the functionless rent-grabbing middlemen, *viz.*, the Khots. It perpetuates the confiscation of the earnings of the toilers in the field without guaranteeing to them even a bare subsistence. The nature of the land system is thus anarchical and confiscatory. It favours an absentee, the so-called superior occupant, as against the actual cultivator of the soil. This grave injustice needs an immediate medy in the form of further protection and definite guarantees to the tenants."

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These remarks will clearly show that the Bill before the House is just in time in order to remove certain disabilities under which the tenants have suffered so long.

The next point which we must take into consideration is that for the tenants the khot acts also as a *sawkar* or money-lender. Thus a khot exercises influence on his tenants in a dual capacity, i.e. firstly he is a master and, secondly, he is also a sawkar to the tenant. The tenants are thus completely under the thumb of the khots, and unless they are freed by some means from the clutches of the khots, there is no hope for them.

You will find that most of the khots in Ratnagiri District are very small shareholders, and most of them are not living in their khoti villages but have gone out to better their conditions. These are absentee khots.

Now I shall deal with certain points of opposition to this Bill from the khots. I have a representation from the President of the Ratnagiri Jilha Khot and Jamindar Sabha raising certain objections to the Bill, which I shall deal with hereafter.

Their first objection is the imposition upon the permanent tenant a liability to pay to Government the assessment and the local fund cess due on their holdings, a liability which has never existed in the past. What the amending Bill now does is that the tenants are to pay assessment to Government direct and not to the khots. As I have observed before, this is a healthy sign of the times and is the only way to free the tenant from the clutches of the khot. I shall deal with this objection at length later.

The second objection is that the Bill confers upon all permanent tenants the right to transfer their holdings, removing the necessity of having to obtain the consent of the khot or khots concerned to such transaction, which necessity has always existed from time immemorial. The Bill has done away with the need for obtaining the consent of the khot for the transfer or sale by the tenant of his rights. This change has been made because we know that the khots, before they gave their consent, exacted heavy amounts, for they well knew that unless they gave their consent the tenant was helpless. This was also responsible for tying down the tenants to the lands and keeping them always under the thumb of the khots.

The third objection is to the right conferred on the tenant to apply to the Mamlatdar for determination of reasonable rent. My hon. friend Mr. Mandlik said that there were no disputes between the khots and the tenants in this matter. No doubt there may not have been disputes, for we know that in America slavery was abolished not because the slaves complained against it but because humanity demanded it. The state of the tenants under the khots in the Kolaba and Ratnagiri districts is similar to that of the slaves who have long been freed with the abolition of slavery. The tenants are like dumb-driven cattle who cannot express themselves and are perpetually under the influence of the khots. Therefore, my submission is that the provision made by this Bill is very necessary if the tenants are to be uplifted from their present position.

There is also another reason in support of this measure. We must take account of the changing economic circumstances. The old and out-of-date economic structure must be broken and destroyed and a new one raised which will suit the changing times.

Another change sought to be introduced, and which is also opposed by the khots, is that the *kabulayats* or agreements with the tenants will be for 10 years and not for a period less than that. This change is very necessary as it will give some security to the tenant.

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this Legislature? We find that Bill after Bill is introduced and treated in a haphazard fashion; overnight a Bill is drafted; the next day it is introduced; on the third day it is referred to a Select Committee; and, on the fourth day it is passed. Is that the way to legislate? I submit, Sir, that I have never seen such a thing. I have had experience on legislative boards for many years. I was a member of the Bombay Council for ten years. I was elected by the Southern Division constituency thrice to the Bombay Council; and among the electors were the people of the Kolaba and Ratnagiri districts. I was elected twice to the Central Legislature, and I was there for six years. Thus, I have to my credit 16 years' experience in the legislature, and I never found Bills rushed through in this—I will not say 'indecent haste' for fear of its being termed an "unparliamentary expression"—over-hasty and over-enthusiastic manner. Why is this Government raising unnecessarily a hornets' nest about its ears? What is the present position of this Government? The present Government is not secure in its position. It is not yet firm in its saddle.

An Hon. MEMBER: Absolutely firm.

Mr. D. V. BELVI: A new constitution for India is soon to be drawn up. Nobody yet knows what fundamental rights will be guaranteed under the new constitution. There is a chance that the present Government and the present arrangements may be upset like an apple cart. So, why not have patience and wait till your position is secure? Already there is a good deal of discontent in the country. There is a sort of a fratricidal war going on in the country between the Hindus and the Muslims. You are now adding to the discontent prevailing in the country by this unwise measure.

My submission in the first place is, Sir, that this Bill is inopportune. Secondly, what are Government going to do by this Bill? They are going to incorporate certain provisions in the Bill for the benefit of the tenantry in the two districts of Kolaba and Ratnagiri. Why is Government doing all this? I was just told by my hon. friend Mr. Mandlik that the Khoti Settlement Act of 1880 was a sort of compromise between the Government and the khots of the Ratnagiri district. There was a great deal of litigation between the khots and the Government, and Government had to say, "Let there be peace in the country; let us arrive at some arrangement about the system". Accordingly, they passed this Act of 1880. Is not the present Bill, therefore, barred by a sort of estoppel? It may not be a legal estoppel under section 115 of the Evidence Act; but, is not Government morally bound in honour to respect what was done with the consent of Government in 1880? Why should there be tinkering at the legislation of 1880? Though a lawyer may say that the principle of estoppel is not strictly applicable to the facts of the present case, there is the moral estoppel. Once a matter is settled between two parties, it is unreasonable, it is discourteous, and it is impolitic to open the same again. Under the Act of 1880, the relations between the tenants and the Khots and between the Government and the khots have been settled. The tenants have been classified into three classes, and the rights and obligations of the three classes of tenants have been definitely settled and they have been acted upon till now. The first class of tenants is '*dharekaris*'. There is no difficulty about them, as they pay their assessment not directly to Government, but through the khots. I know the khots will not in any way be losers if the *dharekaries* pay the assessment directly to Government.

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We have got to march with the times, and viewed in this light, the legislation that has been brought forward ought to receive support from everybody. We are going to have a new order of things. We are demolishing the old and out-of-date structures and building new ones in their place. We are thinking of scraping the Inamdars and even the Native States. The Khots, as I have pointed out, are not absolute owners of lands, but they are mere farmers of revenue, and it was only by some mistake or misconception that certain rights came to be conferred on them. We have to take away those rights from them if we want to build the administration on a new and sound base. In fact, I have been elected from Kolaba *cum* Ratnagiri districts and by the khots there, but still I would appeal to them not to oppose this measure. I earnestly appeal to them to march with the times.

I do not see any reason why the khots should oppose the provision in the Bill which lays down that the assessment should be paid to Government by the tenants and not by the khots as now. The khots have been complaining that they do not get payment from the tenants and that they have to pay the assessment sometimes out of their own pockets. If these are the circumstances, the khots should thank Government for having saved them the trouble of paying the assessment and having put that responsibility on the shoulders of the tenents. Another usual complaint of the khots is that for all the troubles they take they get nothing in return. If so, why do they want to remain as khots ? The reason why they are not prepared to give up this right is that so long as they pay the assessment to Government, they are the masters of the tenants under them. This a very valuable right, and they are not prepared to give up that position. But Government must see what is in the interests of the tenants and help them to improve their lot.

I, therefore, feel that the Bill before the House is a reasonable measure. Although some changes may be suggested by hon. Members, the Bill as a whole is a healthy measure and should receive the support of the whole House. Unless we pass this legislation it is not possible for us to go further, to march with the times and, I, therefore, request all hon. Members of this House to give their support to this Bill. With these words, I take my seat.

Mr. D. V. BELVI : Mr. President, Sir, I regret very much that I cannot support this measure, and I rise to oppose it. It seems that this Bill is a companion of that accursed Bill No. VII of 1946. Both the Bills hang together. So, in considering this Bill, I cannot forget the fact that I shall have to oppose the other Bill also very strongly. I shall now say a few words about this Bill.

Now, what is the position in the present case ? Is it necessary to legislate in this matter ? Has any occasion arisen and has any grievance been placed before the public in connection with this matter between the khots and their tenants ? It is always unwise to legislate when there is no need for it. The present Bill reminds me of what Edmund Burke has said, on more than one occasion, that if a healthy man takes medicine needlessly he renders his body insecure against diseases. Similarly, when legislation is undertaken when there is no occasion for it, it produces a very bad effect. Before any legislation is embarked upon, it must be seen by the gentleman who brings forward a Bill that there is, in the first place, a necessity for it ; secondly, he must ascertain the views of the public, supposing that there is a need for it ; and, thirdly, everything concerning it should be done very carefully, deliberately and patiently. Sir, what do we find in

M[r. D. V. Belvi]

But, Sir,we know that there is the question of sentiment, and that sentiment has to be respected. It is very difficult to get over sentiment. Now the second class of tenants have to pay their assessment to the khots and something more to the khots themselves. Though this class enjoys lesser rights, there is no difficulty in allowing them to pay the assessment through khots, and again, there comes the question of sentiment. Also, there will arise the question of employing more hands by Government for collecting the land revenue through Government agency. I do not know whether Kulkarnis or talatis are appointed in such villages to collect the land revenue from the khots. Now, if the assessment is to be collected by the Government directly from the tenants, many more hands will have to be employed, and this means more expenditure. Why should the general tax-payers be asked to bear this additional expenditure ? The status of the third class of tenants, which is said to be precarious, has also been settled under the Act of 1880. We learn that something in the nature of a record of rights has been drawn up, in which all the details now included in the record of rights drawn up under Chapter X-A of the Bombay Land Revenue Code of 1879 are entered. Where, then, is the need for introducing any new record of rights again ?

Mr. MORARJI R. DESAI : At present, there is no record of rights in the villages.

Mr. D. V. BELVI : The khots have to maintain a sort of accounts. I do not know by what other name they call it, but I am told that there is a sort of record in which the name of the khot is given, his land is described, the name of the tenant is given, the amount of the rent to be paid is given and so on. We find all these details given there. So, why abolish that system and bring in a new one ? Is it because, it pleases the Congress Government to show that they are now in power and that, therefore, they must assert their power ? There is no other reason for the proposed change. They have no consideration whatever for the feelings of the people.

We are told that these tenants are slaves at present. That was the name given to the tenants when Bill No. VII of 1946 was under consideration in the Lower House. I hope to reply to that assertion before long.

Mr. MORARJI R. DESAI : I have not said that.

Mr. D. V. BELVI : You have said that not only once, but three or four times. I am going to read it out at the proper time, and you will see what reply I will give you. It is a very bad phraseology to use against the poor landlords. They are being called slave-owners as if they have committed a grave offence and for years together. The expression is used in the speech of the Hon. Minister on 4th February 1938. I have got a copy of it with me. You have called tenants " landless slaves ".

Mr. MORARJI R. DESAI : Landless slaves.

Mr. D. V. BELVI : There is the word ' slave ' there.

Mr. MORARJI R. DESAI : I maintain it.

Mr. D. V. BELVI : You have not qualified the term there. The present Bill is the outcome of a fad of a certain gentleman ; he has brought forward the Bill to see that all the provisions of the Tenancy Act are bodily transferred to the Khoti Act. I submit, Sir, that such a Bill should not be allowed to pass unchallenged in a body of Legislature. It is very unwise always to embark upon legislation for nothing. We find that the Congress Government is extremely active. The activities may be called, in the words of Edmund Burke, quadrumanous. That is the expression used by Edmund Burke in his essay on the French Revolution. It means ' monkey-like '. The present Government is behaving like a bull in a China shop.

Mr. MORARJI R. DESAI : We all belong to the same species !

Mr. D. V. BELVI : Would you like to be called monkeys ?

Mr. MORARJI R. DESAI : That is what you are doing.

Mr. D. V. BELVI : I am telling you that you are behaving in that manner. The Congress Government is behaving as if it were destroying every old system, the system of marriage not excluded. (*Laughter*). They may some day destroy our system of worshiping idols saying that it is wrong to worship God in the form of an idol ! They have no respect for the past ; they have no respect for the feelings of others ; you are in a majority, and in spite of our opposition, you will see the Bill through.

Mr. MORARJI R. DESAI : Sir, is the Hon. Member addressing the Chair or me ?

Mr. D. V. BELVI : I am addressing the Chair, and not you (*Laughter*). I am addressing you through the Chair.

Sir, this is a very bad way of legislating, and, therefore, I oppose the Bill.

Mr. NARSINGRAO S. DESAI : I rise to oppose the Bill. The various points on which our opposition is based have been explained to the House by the speakers who preceded me. I have only to say a few words about the Khoti service. If Government are going to put an end to the Khoti service, it is only right and proper that some commutation allowance should be paid to them. I think that in the case of Paragana vatandars, such commutation allowances were paid to them in 1864. In the same way, I think that in the year 1913 or 1914 the Kulkarnis and Patels were given such Commutation allowance. Therefore, if Government want to do away with the Khoti service altogether, they should provide for the payment of yearly allowance to them. With these words, I oppose the Bill.

5-30 p.m.

Dr. G. S. MAHAJANI : Sir, I must admit at the outset that I am not at all very well informed on the question of the Khoti tenure, but my friend on the left (Mr. Vedak) who spoke before me made an appeal that it is open to members to make suggestions to temper down some of the clauses and lessen the severity of the changes made by the Bill. [An. Hon. Member : " No, no."] It is open to me to understand his words in that sense which it obviously bears. I shall confine myself on the first reading of this Bill to only four points. I refer to them now because I shall not be able to do so at the second reading of the Bill, although I have put down an amendment which will come up for discussion at that stage.

[Dr. G. S. Mahajani]

Referring to the Statement of Objects and Reasons, in Modification IV, the Statement says—

"As crop-share rents are being compulsorily commuted, retention of section 14 of the Khoti Settlement Act is unnecessary".

I wish to make only one observation in this connection. I am not at all satisfied that the principle of crop-share rents has been found to be undesirable or obnoxious. The public will be glad to know the evidence showing that this system of crop-share rents does not work to the benefit of both parties or that it works to the detriment of one party or the other. But as this is a matter on which I propose to speak at length when the Tenancy Bill comes up for discussion in this House, I shall leave it at that for the time being and pass on to the second point.

Modification X reads as under :—

"This amendment is necessary as all privileged occupants will pay survey assessment direct to Government and will only pay the balance admissible under the Khoti Settlement Act as rent to the Khot."

I should like to be informed by Government why they do not propose to collect the whole amount direct from the tenants and pay the Khot's share themselves. Why should the collection of the Khot's share be left to the Khot ? If this also is undertaken by Government, there will not be any occasion for what Government call exploitation. As in some inam villages Government collect the entire revenue and distribute it to the inamdars, they might collect the whole amount direct from the tenants and pay the Khot's share.

Mr. MORARJI R. DESAI : There is no such inam village.

Dr. G. S. MAHAJANI : The third point which I should like to ask and on which the Bill is silent is this : What do Government propose to do in respect of the dues of the inamdars in Khoti villages ? There are some villages where the inamdars receive the dues from the Khots. Now, if Government collect the dues from the tenants and the Khot will collect only that part of the dues which is due to him, who will pay the dues of the inamdars ?

The fourth point which I should like to ask is this : Henceforward, the village officers (the Talatis) will be collecting the rents from the tenants. The Khots will not come into the picture. Therefore, receipts will have to be passed by these village officers. My reading of the Bill is that the Talatis to be appointed by Government will not henceforward get what is called the " hereditary status ", and under section 58 of the Land Revenue Code the receipts have to be passed by hereditary Talatis. Therefore, the point remains in doubt, and I should like to have it elucidated.

I trust that the Hon. Minister will clear up all these points when he rises for a reply.

Mr. MORARJI R. DESAI : Sir, it has been my unfortuate lot on every Bill to face, for no reason whatsoever, the angry criticism of the hon. Member opposite to me. (Mr. Belvi). I respect his age and his learning But surely the hon. Member does not expect that everything that he says should be taken by me as gospel truth and should be accepted by me in order that I may not be considered a bull in a China shop or to behave in a monkey-like manner. It is his privilege to give such similes, All that is attributable to his age, and I do not want to retaliate.

The Hon. the PRESIDENT: That was a quotation from Burke, I think.

Mr. MORARJI R. DESAI: It may be so, but the quotation was meant to apply to me, although, of course, the hon. Member addressed the Chair.

The Hon. the PRESIDENT: It was for Government. Nothing was meant personally.

Mr. MORARJI R. DESAI: In all these matters there is nothing personal, but, after all, we are all human beings and we cannot always remain impersonal. And if the hon. Member had remained impersonal, he would not have gone into a rage and said some things which he did say; and I should then have taken the whole thing in a different manner altogether. However, I do not want to dilate on that point at all.

The hon. Member argued—and he uses this argument on every other Bill—that we are bringing forth Bills in a hurry, without thinking, without consideration, and without caring for the public. I do not know how he concluded that we drafted this Bill overnight. The hon. Member does not know that I took three months to draft this Bill. He does not know that the Bill was under consideration even before we came in. The Section 93 Government considered this Bill for two years, and they left it over to us. We were considering a Bill of this nature even in the year 1938-39. There are files in the Secretariat which give a complete history of the subject. If anybody is interested to see them, I can show them. But the hon. Member who knows nothing about the Khoti tenure, who knows nothing about the conditions obtaining in that tenure, comes forward and criticises the Bill because he has taken a violent dislike to me on account of the Tenancy Bill. I have no doubt that if I had not brought that Bill in the House, I would not have merited all this anger from him. But I am afraid that in the course of one's public duty, one has to do things and has to displease some people. It is impossible in this world to please every section of the population. And if we want to have a society which will be beneficial for a large number of people who live in the Province, it will be necessary to displease a few people who all along had the advantage in this country on account of the peculiar circumstances under which we had to live for the last so many years.

Then, the charge of haste and hurry is a charge made without knowing things. Otherwise, it would never have been made. I was reminded of the good old days of the old Legislative Council. We all know the state of things then. Is it meant to suggest that the present Assembly also should move at a snail's pace as they were then moving? They could afford to do so at that time, because the times were different, and they did not come with any specified principles specified programme. Each one came on his own principles. And even if they wanted to do anything, that time they had not the power and the strength to do so. I do not say it was at their fault.

Prof. S. R. DAVAR: The present generation has grown wiser.

Mr. MORARJI R. DESAI: The present generation has grown wiser. Wisdom is not certainly the monopoly of the older men. I am prepared to learn at the feet of the hon. Member where I am convinced that I have something to learn. But I would also suggest that he has some things to learn from me if he is prepared to learn. If he does not want to learn, I do not want to force myself on him. Let him not say that because we depart from the past practices we are doing something

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which has no sense and we are doing something which is wrong. It must be clear that if we go on arguing in this manner the world will never advance. Are we to take it that everything that was done in the past was perfect and no change is required ? That may be the position of some old men. That is bound to be so, because, after all, in spite of the great experience that one has, at the end of it all new visions cannot come in in the case of everybody. However, I do know that there are old people who have even better visions and far greater visions than even young men. There is no question of comparison between old and young in this matter. But why should we claim that any particular age has the monopoly of all wisdom ? That is all I want to say. I do not say that I am wiser in every-way than those of the past generation. Not at all. I may be doing something in the present which might have been considered wrong in the past. But one has to live in the present and not in the past. One cannot also do everthing as one wishes:; one has to go with the popular will ; one cannot oppose the popular will.

There was nothing , Sir, in the argument made by the hon. Member from Belgaum. He opposed the Bill perhaps as a matter of consistency, because he is going to oppose vehemently the other Bill. I have no quarrel with that. Whatever he feels honestly he must do. But let him not quarrel with me for what I think honestly and what I am trying to do ? He may think, he may even have justification to think, that I am making mistakes or that I have not sufficient intelligence. But, after all, only the intelligence that we have can be used by us, and the wonderful intelligence that he and his friends may have is no use to us as long as we are not convinced of it. That is why if we are going to be affected by any of these things, a patient and sympathetic appreciation even of the impatience of the younger generation will be more effective than a denunciation of the type which was made here.

Then, one hon. Member suggested : why not end this and commute the whole khoti tenure ? But the khots do not claim that this is a khoti service. They claim they are the proprietors. Where is the question of any commutation ? But there is no question of expropriating them in this Bill. There is no question of taking away their lands or their proprietary rights in this Bill. What is done in this Bill is to regulate their relations with tenants in some matters and also to have provisions whereby rents will be fixed in a reasonable manner in cases where they are not reasonably fixed or where they are considered very high. That is all that is being sought to be done in this Bill.

It was suggested that there is a record. Yes ; there is a sort of record, which is no good, which is not convenient. Otherwise, why should Government try to have new record of rights by putting forth all this labour ? I do not think Government would have any pleasure in taking unnecessary measures, measures which will do no good to anybody or which will harm people. That is not the attitude with which this Government is working. I can assure hon. Members that we have very carefully thought over these matters. We do carefully consider all the arguments that are advanced for and against a Bill or proposition and then we come to conclusions according to our lights. That is how we have dealt with this Bill. We have consulted people ; we have gone through the heavy files which were there in the office. It is not true to say that there is no data. It is true that there is no data before hon. Members. But that is not my fault. Because they were ignorant about these things, would it be right to presume that I was also ignorant ? I do not think that criticism is justified.

Prof. S. R. DAVAR: The data should have been published.

Mr. MORARJI R. DESAI: I do not think I was bound to publish all these data. If I am asked for anything, if anybody wants to come and see any data in a friendly spirit it will be open to him to approach us. But if anybody wants to come only for the sake of embarrassing us, no such facility will be given, because that is not the way to give help or take help. The data are there. But what data are required in these matters? That is what I want to know. There have been cases, criminal cases, in Ratnagiri District between tenants and khots; there have been agitations going on; there have been quarrels going on—in the matter of the recovery of rents or fixation of rents. The relations between the khots and their tenants can never be called pleasant by any stretch of the imagination. And this is not what happened in the time of the Congress Ministry. This is what happened during the section 93 administration and in the days before the Congress Ministry took charge in 1937. Even that Government, which was always on the side of khots, was forced to come to the conclusion that some restrictions must be placed on the khots. I may assure hon. Members of this House that we have not gone much further than the proposals of those people who were always the friends of khots. I am reminded, Sir, of the Khoti Settlement Act of 1880 and it is suggested that Government had then agreed that no further restrictions would be put. It is, therefore, argued that we have now a moral responsibility not to do anything further. We can never be bound by the actions of the past Government which had different standards in those matters and had a different aim and purpose in bringing the Khoti Settlement Act. We cannot be bound down by previous Governments in matters which touch the happiness of the largest number of people. If we are bound down by such a wrong conception of ethics, I am afraid no Government will be able to advance further and to enact measures which are in the interests of the people. I can say it is only in the heat of criticism which is unreasonable that such an argument can be advanced. Otherwise, I do not think that such an argument would have been advanced by my hon. Friend who is such a fine lawyer and who is a very learned gentleman.

My hon. Friend Dr. Mahajani asked me some questions about the crop-share system. He said that it is not proved that the crop-share system is in any way harmful. But, what is the meaning of proof? Should the proof come from the people who receive crop-share or should it come from the people who have to pay the crop-share? Should the man who wears the shoe say where the shoe pinches or should another man say that it does not? That would not be right. The tenants want this provision, because they feel that they are harassed and they are finding it difficult. Personally, I do feel on theoretical grounds that a crop-share is more convenient, but after careful consideration I have come to the conclusion that the crop-share system is impossible to work in the present circumstances, and if it is continued, it is likely to create more trouble between the persons concerned instead of creating harmonious relations between them. That is why it is sought to commute the crop-share.

It was then suggested that all rents should be collected and the Khot should be paid by Government without any trouble. I do not see why Government should oblige the Khots in this matter. So far as inams in the Khoti villages are concerned, though the Khot stands to benefit, Government should not mind it and should not harm the Khot, and that is why Government has come to the conclusion that only assessments should be recovered by Government. But, in the matter of recoveries of other rents, I do not see why Government should recover them for the khots. There is no purpose at all.

[Mr. Morarji R. Desai]

About the matter of receipts, I do not actually understand what my hon. Friend said. Perhaps, he was not clear himself. Receipts will be given by Talatis. Patels only countersign them, and it is not necessary that the Patels only should pass the receipts. The question of Patels is a question which is not uniform throughout the Province. There are hereditary Patels and there are stipendiary Patels also. It cannot be laid down in any law that a receipt must always be passed by a hereditary Patel only. The receipts are given by the Talatis and they are countersigned by the Patels. The receipts given by the Talatis are as valid as those issued by the Patels. There cannot be any law to make them illegal. Moreover, there is a Patel in every village and there is no village without a Patel, and thus he is bound to countersign the receipts issued by the Talatis.

Dr. G. S. MAHAJANI: Under section 58 of the Bombay Revenue Code the receipts are to be passed by the hereditary Patels.

Mr. MORARJI R. DESAI: Every Revenue Officer receiving payment of land revenue shall give a written receipt for the same and this is an obligatory duty of those officers. This does not mean that a receipt should be issued only by a hereditary Patel and not by a stipendiary Patel. My hon. Friend is not a lawyer, and that is why he has not understood this clause very well. I say this with all due respect to him.

Dr. G. S. MAHAJANI: The Hon. Minister might see section 16 where a sub-clause was inserted in 1936 for the purpose of satisfying the requirements of section 58 of the Bombay Land Revenue Code. The Hon. Minister said that the expression "hereditary village accountant" shall always be deemed to include Talatis appointed by the Provincial Government where the liability has been commuted. But, difficulty will arise where it has not been commuted, and if Government gives an assurance, I have not anything more to say.

Mr. MORARJI R. DESAI: There is no question of giving any assurance. This has been in vogue for several years. In Gujarat, in several districts, there are stipendiary Patels and receipts have been given by them and they are being acknowledged by the Civil Courts, and this interpretation that only hereditary Patels can issue a valid receipt is not correct. But, if any such difficulty is raised in a court of law, Government is bound to correct it when the time comes. I cannot assume that there may not be other interpretations at all. After all, law is a very wonderful thing, and interpretations come in a wonderful manner at times. At present, they have not arisen at all.

Mr. D. V. BELVI: Law is sometimes called an ass.

Mr. MORARJI R. DESAI: I do not want to say that, and if I had said that, the hon. Member would have felt offended.

Then my hon. Friend Dr. Mahajani also referred to the inams in khoti villages. I do not know what inams he refers to. Probably he refers to the lands assigned to village servants as remuneration for certain services which they render. In these cases the emoluments will have to be paid by the khot because he is receiving the revenue from these lands and there is nothing that is going to be taken by Government.

Mr. R. N. MANDLIK: There are inams in khoti villages. The emoluments are to be paid to the inamdars in khoti villages by the khots.

Mr. MORARJI R. DESAI: In that case, there is no question at all. It is the responsibility of the Khots to do that. I must admit I have not yet understood the position. I shall have to make further enquiries in the matter.

I have nothing more to say, Sir, and I would request the hon. Members in this House to pass the first reading. Of course, after what is stated, members will oppose it. But, I cannot say that they must not oppose it. They are free to do so, and I will have no grievance about it.

Question, "that L. A. Bill No. V of 1946 (A Bill to amend the Khoti Settlement Act, 1880) be read a first time" put, and agreed to.

The Hon. the PRESIDENT: The Bill is read a first time.

Mr. MORARJI R. DESAI: Sir, I beg to move that L. A. Bill No. V of 1946
6 p. m. (A Bill to amend the Khoti Settlement Act, 1880) be read a second time.

Question put, and agreed to.

Bill read clause by clause

The Hon. the PRESIDENT: There are certain amendments to clauses 3 and 9. There is one amendment to clause 3 and two amendments to clause 9. I shall, therefore, put clause 2 before the House.

Clause 2 (*Amendment of section 7 of Bom. I of 1880*) ordered to stand part of the Bill.

Clause 3 (*Amendment of section 8 of Bom. I of 1880*).

In section 8 of the said Act—

(*i*) for the words "shall be held to be yearly tenants" the words "or if the agreement provides for a term not exceeding ten years shall be held to be tenants for a period of not less than ten years" shall be substituted; and

(*ii*) after the figures "33" the word, figure and brackets, "sub-section (1)," shall be inserted.

The Hon. the PRESIDENT: There is one amendment to this clause in the name of the hon. Member Mr. R. N. Mandlik. He may move it.

Mr. R. N. MANDLIK: Sir, I beg to move:

In clause 3, seeking to amend section 8 of the said Act, add the following at the end of the [redacted] section:

"Unless the Khot has conferred or confers on such tenants the status of a protected tenant as contemplated by the Bombay Tenancy (Amendment) Act, 1946".

Question proposed.

Mr. R. N. MANDLIK (Spoke in Marathi): ही उपसूचना करण्यांत माझा हेतु इतकाच आहे कीं, या कलमांतील कुळाला संरक्षित कूळ करून घेण्याची सवलत खोताला असावी. तशी सवलत त्याला असली तरच त्याला स्वत: घरीं जमीन लागवड करावयाची झाल्यास कुळाला नोटीस देऊन त्याच्याकडून जमीन काढून घेतां येईल.

Mr. MORARJI R. DESAI: Sir, this amendment is not at all necessary. The Tenancy Act will apply to those tenants as well.

Amendment, by leave, withdrawn.

Clause 3 ordered to stand part of the Bill.

The Hon. the PRESIDENT: No amendments have been received for clauses 4, 5, 6, 7, 8.

Mr. R. N. MANDLIK: Sir, clause 4 should be put separately. I want to oppose it.

The Hon. the PRESIDENT: The motion is that clause 4 do stand part of the Bill.

Clause 4 (*Amendment of section 10 of Bom. I of 1880*).

(*i*) after the words "failing to pay" the words "the survey assessment or" shall be inserted; and

(*ii*) the portion beginning with the words "or does any act purporting to transfer his land" and ending with the brackets, words and figure "(except in the cases provided for the in section 9)" shall be deleted.

Mr. R. N. MANDLIK (Spoke in Marathi): खोताच्या कुळांना जर आपल्या जमिनी विकावयाच्या असतील तर त्यांना खोताच्या संमतीची जरूरी आहे असा आतांपर्यंतचा कायदा होता. परंतु आंता या कलमामुळें खोताच्या संमतीची जरुरी नाहीं असें ठरविण्यांत येत आहे. खोताच्या संमतीचा हेतु एवढाच होता कीं खोताच्या मालकीच्या जमिनींत तिऱ्हाईत मनुष्य घुसूं नये. कुळानें जर आपली जमीन विकावयास काढली आणि ती दुसऱ्या वाटेल त्या मनुष्याच्या हातीं पडली आणि तो तिऱ्हाईत मनुष्य त्या खोताचा मित्र नसून शत्रु असला तर तो व्यवहार खोताला त्रासदायक होण्याचा संभव आहे. तसें होऊं नये म्हणून खोताच्या संमतीची आतांपर्यंतची वहिवाट होती आणि ती कायद्यामध्यें नमूदहि केलेली होती. मानें या बाबतींत एवढेंच म्हणणें आहे कीं जर या कलमाप्रमाणें कुळाला आपली जमीन खोताच्या परवानगीशिवाय विकण्यास मुभा असेल तर निदान तीं खोताच्या शत्रूच्या हातांत पडूं नये अशी तरतूद करण्यांत यावी. यासाठीं खोताला राइट ऑफ प्रिएंप्शन देण्यांत यावा. खोत लोक अशी संमति देण्यासाठीं पैसे मागतात असा आक्षेप घेण्यांत येतो. कांहीं बाबतींत ती गोष्ट खरीहि असेल व पैसे घेऊन संमति देणें ही गोष्ट न्याय आहे असें मी म्हणत नाहीं. असे पैसे मागून संमति देणें सरकारनें गैरकायदा ठरवावें. परंतु कांहीं झालें तरी खोताच्या जमिनींत तिऱ्हाईत मनुष्य शिरणें ही गोष्ट अनिष्ट आहे आणि म्हणूनच त्याला राइट ऑफ प्रिएंप्शन देण्यांत यावा अशी माझी सूचना आहे. आजपर्यंतच्या खोंताच्या संमतीच्या अटीमुळें कुळांच्या जमिनी त्यांच्याकडे राहिल्या हा फायदाच झालेला आहे. आजपर्यंत तीनशें ते साडेतीनशें खोती गांव खालसा झाले आहेत, परंतु जमिनी वर्ग करण्यासाठीं खोताच्या संमतीची आजपावेतों ज़रूर होती म्हणून पूर्वीच्या कुळांकडेच त्या जमिनी राहिल्या. या उपर सरकारला जर खोताच्या संमतीची अट काढून टाकावयाची असेल तर निदान खोताला राइट ऑफ प्रिएंप्शन द्यावा अशी माझी सूचना आहे.

(*Substance of the above in English.*)

Up to now the consent of khots was necessary before any land was disposed of by the tenant to a third party. By this Bill it is being contemplated that the

[Mr. R. N. Mandlik]

lands of the khots can be sold by their tenants to any third party without taking the previous consent of the khot. This procedure is really harmful to the khots, because if the land is sold to a third party without the consent of the khot and if that third party happens to be an enemy of that khot, then the new owner will be a nuisance to the khot. I, suggest, therefore, that the khots should be given the right of pre-emption if at all it is to be decided that the lands can be sold by the tenants without the consent of the khot.

Mr. D. V. BELVI : Sir, I rise to support the amendment suggested by my hon. Friend Mr. Mandlik. The tenants as a class are very poor ; they have very few moveables ; and if this restriction is not imposed, there will be no sort of guarantee that the khot will get his rent.

The second restriction is that the land may remain in the possession of the tenant, to give him some sort of status.

I, therefore, recommend that this amendment be accepted by the Hon. Minister in charge of the Bill.

Mr. MORARJI R. DESAI : Sir, this clause is a consequential change on account of section 31 of the Tenancy Act, in which this position has been remedied already. It was remedied in 1939, but there was a time when this was not applied at all. Nothing more has been done by this.

Then again, it has been suggested by my hon. Friend Mr. Mandlik that a khot should have the right of pre-emption. I may submit that, if that right is given to the khot, he will never give his consent.

Mr. R. N. MANDLIK : There is no question of consent ; the right of pre-emption should be given to a khot.

Clause 4 ordered to stand part of the Bill.

Clause 5 (*Deletion of section 14 of Bom. I of 1880*) ordered to stand part of the Bill.

Clause 6 (*Amendment of section 16 of Bom. I of 1880*) ordered to stand part of the Bill.

Clause 7 (*Amendment of section 20 of Bom. I of 1880*) ordered to stand part of the Bill.

Clause 8 (*Amendment of section 24 of Bom. I of 1880*) ordered to stand part of the Bill.

Clause 9 (*Amendment of section 27 of Bom. I of 1880*).

(1) The existing section 27 of the said Act shall be renumbered as sub-section (*1*) of that section and in the said sub-section (*1*) for the words " are not unanimous as to the nomination " the words, figures and letter " do not agree by a majority of all the co-sharers of the village as to the nomination or if the sharer who is so nominated is for any reason unable to serve as managing khot, and fails to delegate his duties and powers under section 31A in such time as may be prescribed by the Collector in this behalf " shall be substituted :—

(2) in the said section 27 the following new sub-section shall be added, namely :—

" (2) Where the co-sharers have, for six successive years at any time after the commencement of the Khoti Settlement (Amendment) Act, 1946, failed to nominate one of their number within the prescribed period as required by the Collector under sub-section (*1*), or to agree by a majority of all the co-sharers of the village to the nomination, or if the sharer who is so nominated has for any reason

been unable to serve as managing khot, and failed to delegate his duties and powers under section 31A within such time as may have been prescribed by the Collector in this behalf, the village shall thence forward vest in the Crown for the purposes of the Province free from all encumbrances created by any of the co-sharers or any of their predecessors-in-title or in anywise subsisting as against any of the sharers, but without prejudice to the rights of the persons in actual possession of the lands in the village".

Mr. R. N. MANDLIK : Sir, I beg to move —

In clause 9, seeking to amend section 27 of the said Act, substitute the words " co-sharers ordinarily residing in the village " for " co-sharers of the village " wherever they occur.

Question proposed.

Mr. R. N. MANDLIK : (Spoke in Marathi) : खोतांच्या नेमणुकांमध्यें युनॅनिमिटी असली पाहिजे असें या कलमान्वयें ठरविण्यांत येत आहे, पण ही युनॅनिमिटी कोणाची ? याच संबंधांत माझी उपसूचना आहे. खोत ज्या गांवांत साधारणपणें राहात असतील त्यांच्या बहुमतानें ही गोष्ट ठरविण्यांत यावी व त्याप्रमाणें खोतांच्या नेमणुका व्हाव्या. नुसतें मेजारिटी कोशेअरर्स असें म्हणून भागणार नाहीं. तसें असेल तर कोशेअरर्सचीं लिस्ट्स करावीं लागतील आणि इलेक्शनप्रमाणें उपद्व्याप होईल. तेव्हां तें टाळण्यासाठीं त्या गांवामध्यें जे खोत राहणार असतील त्यांच्याच बहुमतानें ही गोष्ट व्हावी अशी माझी सूचना आहे.

(Substance of the above in English)

By this amendment I wish that only those co-sharers that are resident in the village should be consulted before a Khot is appointed, because they alone know the conditions of that village well. It is no use consulting all the co-sharers, the majority of whom may be staying out of the village for years together and are, therefore, absolutely ignorant of the conditions of the village.

Mr. MORARJI R. DESAI : Sir, the hon. Member Mr. Mandlik had raised a point of order and said that the rights of other co-sharers would be touched. But I should say that bythis amendment he has touched the rights of the co-sharers. If there are 30 co-sharers in a village and only two are living there, the remainig 8 will not be consulted in the appointment. Sir, I oppose the amendment.

Amendment put, and negatived.

Mr. R. N. MANDLIK : Sir, I beg to move—

In clause 9, seeking to amend section 27 of the said Act, for the new sub-section (2) sought to be added, add the following proviso :

" Provided that a village so attached and managed for six successive years shall thenceforward vest in the Crown for the purposes of the Province."

Question proposed.

Mr. MORARJI R. DESAI : Sir, this provision is already there.

The Hon. the PRESIDENT : What I understand is that the whole sub-clause (2) will go by this amendment and instead a new sub-clause will be inserted. The hon. Member wants to delete these 15 lines and wants to substitute them by these three lines.

Mr. AZIZ GAFOOR KAZI (Northern Division): (Addressed the House in Urdu): Sir, I rise to support the amendment moved by my hon. Friend Dr. Mahajani. It is a very reasonable amendment. The co-sharer who has more than an eight anna share, should have a determining voice in the nomination of the managing khot. I hope that this reasonable amendment will be accepted by the House.

Mr. MORARJI R. DESAI: Sir, this amendment was considered very carefully on two or three occasions. But I must say that I have come to the conclusion that it will not be conducive to justice being done. After all, abstract justice is not justice, and in the name of justice we can do many things. That is why apart from the question of justice, if the hon. Members had considered the question of convenience, it would have been better. The Managing khot has got to look after the interest of the whole village, and if he holds a major interest, say of 8 or 9 anna share,—and it happens in several cases—then he will be given the monopoly of management, and that will change the entire purpose of the clause. The original Act provided that there should be unanimity in the nomination of the managing khot. This meant that the managing khot must have the support of all the co-sharers and it was thought that this might not be practicable. So we decided that the majority of the co-sharers of the village should nominate the managing khot, so that, as he would be the person nominated by the majority of co-sharers, they would have confidence in him and they would feel that their interests would be adequately looked after by him. This amendment was suggested by the Select Committee.

Now, if we accept the amendment suggested by the hon. Member Dr. Mahajani, it would mean that the managing khot would be the person nominated only by a few co-sharers, by those whose interest in the khoti village exceeds fifty per cent. and the smaller co-sharers would have a grievance as they would feel that there is nobody to look after their interests. I think, therefore, that if the amendment is accepted it will, in actual practice, result in injustice. I, therefore, oppose the amendment.

Amendment put. The House divided: Ayes, 5; Noes, 12.

Division No. 1.

Ayes.

BELVI, Mr. D. V.	MAHAJANI, Dr. G. S.
DESAI, Mr. NARSINGRAO S.	MANDLIK, Mr. R. N.
KAZI, Mr. AZIZ GAFOOR	

Tellers for the Ayes: Mr. Ratilal Gandhi and Mr. D. V. Belvi.

Noes.

BAKHALE, Mr. R. R.	MEHTA, Mrs. HANSA J.
DANDEKAR, Mr. V. V.	PATEL, Mr. MAGANLAL B.
DONGRE, Mr. V. S.	PATIL, Mr. SONUSING D.
GANDHI, Mr. RATILAL M.	SATIA, Mr. CHANDULAL B.
GOPI, Mr. M. G.	SHAH, Mr. SHANTILAL H.
KADADI, Mr. N. B.	VEDAK, Mr. V. M.

Tellers for the Noes: Mr. Maganlal Patel and Mr. R. R. Bakhale.

The Hon. the PRESIDENT: I will now put clause 9 to the House.

Clause 9 ordered to stand part of the Bill.

Mr. AZIZ GAFOOR KAZI (Northern Division): (Addressed the House in Urdu): Sir, I rise to support the amendment moved by my hon. Friend Dr. Mahajani. It is a very reasonable amendment. The co-sharer who has more than an eight anna share, should have a determining voice in the nomination of the managing khot. I hope that this reasonable amendment will be accepted by the House.

Mr. MORARJI R. DESAI: Sir, this amendment was considered very carefully on two or three occasions. But I must say that I have come to the conclusion that it will not be conducive to justice being done. After all, abstract justice is not justice, and in the name of justice we can do many things. That is why apart from the question of justice, if the hon. Members had considered the question of convenience, it would have been better. The Managing khot has got to look after the interest of the whole village, and if he holds a major interest, say of 8 or 9 anna share,—and it happens in several cases—then he will be given the monopoly of management, and that will change the entire purpose of the clause. The original Act provided that there should be unanimity in the nomination of the managing khot. This meant that the managing khot must have the support of all the co-sharers and it was thought that this might not be practicable. So we decided that the majority of the co-sharers of the village should nominate the managing khot, so that, as he would be the person nominated by the majority of co-sharers, they would have confidence in him and they would feel that their interests would be adequately looked after by him. This amendment was suggested by the Select Committee.

Now, if we accept the amendment suggested by the hon. Member Dr. Mahajani, it would mean that the managing khot would be the person nominated only by a few co-sharers, by those whose interest in the khoti village exceeds fifty per cent. and the smaller co-sharers would have a grievance as they would feel that there is nobody to look after their interests. I think, therefore, that if the amendment is accepted it will, in actual practice, result in injustice. I, therefore, oppose the amendment.

Amendment put. The House divided: Ayes, 5; Noes, 12.

Division No. 1.

BELVI, Mr. D. V. SAI, Mr. NARSINGRAO S. ZI, Mr. AZIZ GAFOOR	**Ayes.** MAHAJANI, Dr. G. S. MANDLIK, Mr. R. N.

Tellers for the Ayes: Mr. Ratilal Gandhi and Mr. D. V. Belvi.

Noes.

BAKHALE, Mr. R. R. DANDEKAR, Mr. V. V. DONGRE, Mr. V. S. GANDHI, Mr. RATILAL M. GOPI, Mr. M. G. KADADI, Mr. N. B.	MEHTA, Mrs. HANSA J. PATEL, Mr. MAGANLAL B. PATIL, Mr. SONUSING D. SATIA, Mr. CHANDULAL B. SHAH, Mr. SHANTILAL H. VEDAK, Mr. V. M.

Tellers for the Noes: Mr. Maganlal Patel and Mr. R. R. Bakhale.

The Hon. the PRESIDENT: I will now put clause 9 to the House.

Clause 9 ordered to stand part of the Bill.

The Hon. the PRESIDENT : Now, there are no amendments to clauses 10, 11, 12 and 13. I will, therefore, put to the House clauses 10 to 13 together.

Clause 10 (*Amendment of section* 33 *of Bom. I of* 1880), Clause 11 (*Amendment of section* 36 *of Bom. I of* 1880), Clause 12 (*Amendment of section* 39 *of Bom. I of* 1880), and Clause 13 (*Insertion of new section* 43 *in Bom. I of* 1880) ordered to stand part of the Bill.

Clause 1 (*Short title and the Preamble*) ordered to stand part of the Bill.

Mr. MORARJI R. DESAI : Sir, I beg to move that Legislative Assembly Bill No. V of 1946 (A Bill to amend the Khoti Settlement Act) 1880, as read for the third time and passed by the Legislative Assembly, be read a third time and passed.

Question put, and agreed to.

The Hon. the PRESIDENT : L. A. Bill No. V of 1946 (A Bill to amend the Khoti Settlement Act, 1880) is read a third time and passed.

BUSINESS OF THE HOUSE.

The Hon. the PRESIDENT : The second Bill on the Agenda for today was L. A. Bill No. VII of 1946 (A Bill to re-enact the Bombay Tenancy (Amendment) Act, 1941, and to amend the Bombay Tenancy Act, 1939). Another Bill has been added to that, which is L. A. Bill No. XXI of 1946 (A Bill to amend the Bombay District Police Act, 1890). These will be shown on the Agenda for tomorrow.

Mr. D. V. BELVI : How many Bills will there be for tomorrow ?

The Hon. the PRESIDENT : There are two Bills, of which one was shown in today's Agenda. There is another Bill ready, which also will be shown in tomorrow's Agenda.

Mr. D. V. BELVI : It has been decided that we should take up the Tenancy Bill in October only. Therefore, that Bill should not be taken up tomorrow. It should not be shown on the Agenda.

Mr. MORARJI R. DESAI : There is no objection if it remains on the Agenda.

The Hon. the PRESIDENT : The Bill will be shown on the Agenda, but it will not be taken up for discussion tomorrow. The other Bill, viz., Bill No. XXI, will be taken up tomorrow.

There was a Short Notice question from the hon. Member Mr. Belvi, but I understand that he has withdrawn it.

Mr. D. V. BELVI : Yes, Sir ; I have withdrawn it.

The House adjourned at 6-33 p.m. till 2 p.m. on Tuesday, the 24th September 1946.

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KHOTI SETTLEMENT ACT AMENDMENT BILL

The Hon. the PRESIDENT : The House will remember that a point of order was raised by the hon. Member Mr. Mandlik urging that the Khoti Settlement Act Amendment Bill could not be proceeded with because it was the subject matter of a suit filed in a court of law. I overruled his objection and said that I would give the reasons later, I now give my full ruling on the point, and it is as follows :

A point of order to L. A. Bill No. V of 1946 (A Bill to amend the Khoti Settlement Act, 1880) is raised that a suit No. R. M. 19 of 1946 filed in the Senior Civil Judge's Court at Ratnagiri is pending, wherein the points relate to the subject-matter of the present legislation, and, therefore, the principle of *sub judice* applies and the Bill cannot be proceeded with. The substance and the prayers of the plaint were read out and it would appear from the plaint that the suit is filed mainly for the purpose of a declaration that a notification issued by the Government under Act No. IV of 1903 is outside the scope of the powers of Government under that Act and for other consequential reliefs. There is no question of fact involved in the suit. The question is about the powers of Government to issue a notification under a particular Act. It is not even stated in the plaint that Government cannot get by legislation such a power or, if such power existe under the Act, it is *ultra vires* of the Government to have such power. As there is no point of fact or law involved in the suit nor a contention raised that the legislation covered by the Bill is outside the scope of the powers of the Provincial Legislature, the pendency of such a suit cannot prevent the Government from undertaking the type of legislation covered by the Bill. Besides, there is no specific rule similar to rules 32 and 52 in part IX of the Rules dealing with legislation. It is difficult, if not dangerous, to argue by analogy in cases where the omission seems to be not accidental but deliberate. I, therefore, overrule the point of order.

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